BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHARLES DEUTMEYER, Claimant, vs. INNOVATIVE AG SERVICES CO., Employer, and WESTFIELD INSURANCE CO., Insurance Carrier, Defendants.	File No. 5066077 ARBITRATION DECISION Head Note Nos.:	1402.40, 1801, 1803, 2206, 2501, 2502, 2907

STATEMENT OF THE CASE

Charles Deutmeyer, claimant, filed a petition for arbitration against Innovative Ag Services Company, as the employer and Westfield Insurance Company as the insurance carrier. This case came before the undersigned for an arbitration hearing on November 7, 2019, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted by the hearing deputy and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

Claimant was the only witness that testified at hearing. The parties offered Joint Exhibits 1 through 6. Claimant offered Exhibits 1 through 6. Defendants offered Exhibits A through H. All offered exhibits were admitted as evidence in the case without objection.

The evidentiary record closed at the conclusion of the arbitration hearing. However, counsel for the parties requested an opportunity to file post-hearing briefs. Their request was granted. All parties filed briefs on December 6, 2019 and the case was considered fully submitted on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a right shoulder injury that arose out of and in the course of his employment on August 14, 2017.

2. Whether the alleged August 14, 2017 right shoulder injury caused temporary disability and, if so, whether claimant is entitled to an award of temporary total, or healing period, benefits from January 17, 2018 through April 1, 2018.

3. Whether the alleged August 14, 2017 right shoulder injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits on a scheduled member basis.

4. Whether claimant is entitled to payment or reimbursement of past medical expenses contained at Claimant's Exhibits 4 and 5.

5. Whether claimant is entitled to reimbursement of the cost of his independent medical evaluation pursuant to Iowa Code section 85.39.

6. Whether costs should be assessed against either party and, if so, the extent of any such assessment.

After the conclusion of the arbitration hearing and before the case was fully submitted, the parties reached a stipulation pertaining to the issue of temporary disability. In an e-mail to the undersigned dated November 27, 2019, counsel for the parties confirmed their stipulation. Specifically, "[t]he parties stipulate that, if defendants are liable for TTD, the amount due from 1/17/18 through 4/2/18 is $227.08 after applying the net credit of $4,673.09 for section 85.38(2) short-term disability benefits paid to Mr. Deutmeyer." A copy of the November 27, 2019 e-mail will be maintained in the paper version of this file to document the parties' stipulation, though the stipulation is also documented at page 3 (footnote 1) of Claimant's Post-Hearing Brief.

FINDINGS OF FACT

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

Charles Deutmeyer is a 69-year-old gentleman, who worked for Innovative Ag Services Company. Mr. Deutmeyer started his employment with the employer in March 2013. Claimant worked a physical job for Innovative Ag Services Company, having to lift and work overhead.

The medical evidence demonstrates that claimant had a long-standing right shoulder problem. Although records are not in evidence from the time period, there is evidence that claimant sustained a right shoulder injury in the 1970s or 1980s. (Joint Exhibit 3, page 69) Medical records in evidence document more recent medical treatment of significance.

In November 2008, claimant complained to his primary medical provider about chronic right shoulder pain. X-rays were performed, which demonstrated tendinitis and mild arthritis at that time. (Joint Ex. 1, p. 3) In February 2009, claimant described a two-year history of shoulder pain with worsening since December 2008 when he slipped and fell on ice. (Joint Ex. 1, p. 5) The assessment in February 2009 was right subacromial impingement versus chronic rotator cuff tear. (Joint Ex. 1, p. 6)

An orthopaedic consultation in March 2010 identified full-thickness tears and retraction of the supraspinatus and infraspinatus tendons. (Joint Ex. 1, p. 18) Rotator cuff repair was recommended. (Joint Ex. 1, p. 19) However, by May 2010, after the surgeon spoke with two other orthopaedic shoulder specialists, he changed his recommendation, indicating that the other surgeons, "do not feel his rotator cuff tear is repairable." (Joint Ex. 1, p. 20) Claimant also rejected operative intervention in May 2010, but the surgeon opined that claimant would, "likely eventually proceed to an arthroplasty, either a resurfacing or a reversed total shoulder when he is older and less active." (Joint Ex. 1, p. 21)

A right shoulder MRI performed on July 8, 2011 confirmed "a large full-thickness rotator cuff tear" involving the supraspinatus and infraspinatus tendons with "mild to moderate atrophy." (Joint Ex. 1, p. 28) On September 11, 2011, claimant submitted to a surgical excision of a ganglion cyst in the right shoulder, as well as a distal clavicle resection. (Joint Ex. 1, p. 33)

Physical therapy notes in June 2012 document increased right shoulder pain after claimant was carrying a gate in May 2012. That physical therapy note documented that claimant "has a history of right rotator cuff injuries being chronic in nature." (Joint Ex. 4, p. 118) The therapist also documented "Decreased muscle mass over the right infraspinatus and supraspinatus." (Joint Ex. 4, p. 118)

In May 2016, claimant sought further orthopaedic consultation for his right shoulder. At that evaluation, Mr. Deutmeyer reported, "right shoulder pain for approximately 15 years" and reported that he, "had a known rotator cuff tear for a long time." (Joint Ex. 1, p. 43) The surgeon noted that due to atrophy resulting from the rotator cuff tear claimant was not recommended for surgery at the time the rotator cuff tear was discovered. (Joint Ex. 1, p. 43)

Approximately five months prior to this work injury, Mr. Deutmeyer again sought medical care for his right shoulder. On March 29, 2017, he reported chronic shoulder pain, indicating that he was not interested in surgical intervention at that time. (Joint Ex. 1, p. 47) Medication management was recommended and claimant was offered the opportunity to obtain steroid injections for his right shoulder in March 2017. (Joint Ex. 1, p. 49) No evidence exists to demonstrate that claimant submitted to the recommended steroid injections in or after March 2017.

During this interval of time and treatment of his right shoulder between 2008 and the alleged date of injury, Mr. Deutmeyer continued to obtain physicals to drive a semi.

On August 8, 2013, claimant passed a Department of Transportation (DOT) physical. During that examination, claimant reported that he "Tore rotator cuff-right shoulder-May 2011." (Joint Ex. 2, p. 51) In July 2017, claimant reported at a DOT physical that he had a cyst removed from his right shoulder five years prior. (Joint Ex. 2, p. 57)

On August 14, 2017, Mr. Deutmeyer was working for Innovative Ag Services Company. On that date, he was tasked with loading grain into railcars. After the final three cars were loaded, claimant's supervisor asked that claimant ride the railcars down the hill to where other cars were already located. This required claimant to use a hand brake on the railcars to slow and stop the cars as they approached their destination.

Claimant testified that he attempted to apply the handbrake by turning the brake wheel clockwise. He testified he was holding the railing on the train with his left hand and arm. He attempted to apply the brake with his right hand and arm. As he pulled with his right arm from the one or two o'clock position downward, he felt a tearing sensation in his right shoulder. After this event, Mr. Deutmeyer testified he was not able to lift his right arm and testified to a significant increase in his symptoms. (Claimant's testimony)

Claimant reported the injury to his supervisor. According to claimant's testimony, the employer did not initially believe claimant but later observed him having difficulties lifting his right arm. The employer directed claimant for medical care through Regional Family Health Center.

On August 16, 2017, claimant submitted for evaluation at Regional Family Health Center. When speaking with the nurse taking his history, claimant reported a diagnosis of bursitis while a student about 40 years prior. He reported, "Only minor aches to right shoulder between then and now." (Joint Ex. 2, p. 61) However, he did report to the physician that same day that he did "have an old rotator cuff tear 5 years ago confirmed with MRI." (Joint Ex. 2, p. 61) He also reported that the injury was determined to be extensive at that time and surgery was not recommended. (Joint Ex. 2, p. 61)

The physician recommended x-rays and an MRI of claimant's right shoulder in August 2017. (Joint Ex. 12, p. 62) Not surprisingly, the MRI demonstrated "a massive rotator cuff tear involving the entire supraspinatus tendon and most of the infraspinatus tendon." (Joint Ex. 2, p. 64) The treating physician recommended orthopaedic referral to the University of Iowa Hospitals and Clinics for evaluation of claimant's right shoulder.

Matthew J. Bollier, M.D., an orthopaedic surgeon at the University of Iowa Hospitals and Clinics, evaluated Mr. Deutmeyer on September 18, 2017. Dr. Bollier documented that claimant gave a history including "an acute onset of sharp anterolateral shoulder pain and weakness which caused him to be unable to actively lift his arm." (Joint Ex. 3, p. 69) Dr. Bollier also recorded that claimant told him he had a,

> [H]istory of previous injury to the shoulder in the 70s or 80s which he states was either bursitis or a cuff tear. He has done therapy in the distant

> past but that is the only treatment he has had. He was having minimal pain in the shoulder, only occasional aching, prior to the injury and was able to perform all of his job duties without restriction.

(Joint Ex. 3, p. 69)

Claimant's report of only a remote history to Dr. Bollier was not accurate as noted above. Claimant's report to Dr. Bollier that he had not had treatment other than remote physical therapy was also inaccurate. Within months prior to the alleged work injury, claimant was prescribed medications for his right shoulder condition and steroid injections were recommended. Claimant also failed to report to Dr. Bollier the prior surgical intervention on his right shoulder, including resection of the distal clavicle, prior MRIs documenting massive rotator cuff tears, and the prior recommendation against surgical intervention due to the massive nature of claimant's rotator cuff tears. I find that Mr. Deutmeyer was less than forthcoming about his right shoulder history when initially evaluated by Dr. Bollier.

Following his review of the MRI and his clinical evaluation on September 18, 2017, Dr. Bollier noted that claimant had a "Right shoulder massive rotator cuff tear." (Joint Ex. 3, p. 72) Dr. Bollier opined:

> [H]e had an acute aggravation caused by a work duty that significantly aggravated the underlying problem, likely increased the size of the rot [sic] cuff tear, causing an increase in pain and weakness in this shoulder that was not present prior to the injury. To the nearest degree of medical certainty, the work injury was a significant factor/aggravation in causation of the patients [sic] pain, imaging findings, and pathology.

(Joint Ex. 3, p. 72) Dr. Bollier recommended surgical repair of claimant's torn rotator cuff and claimant consented to the surgical recommendation.

Defendants requested an independent medical evaluation, performed by occupational medicine physician, Robert L. Broghammer, M.D., on October 2, 2017. Dr. Broghammer documented a "Noncontributory" medical history, suggesting that claimant did not relay his significant prior right shoulder treatment and diagnoses to Dr. Broghammer during this evaluation. (Joint Ex. 5, p. 126)

Dr. Broghammer assessed claimant with an acute right shoulder strain and a massive right rotator cuff tear, which he deemed chronic in nature. (Joint Ex. 5, p. 128) Dr. Broghammer opined that only the right shoulder strain was related to the work injury. He specifically opined, "I do not believe that Mr. Deutmeyer either caused or significantly aggravated or materially contributed to his preexisting massive rotator cuff tear with atrophy of the muscles and retraction of the tendons to the glenohumeral joint." (Joint Ex. 5, p. 128) Dr. Broghammer referred to claimant's right shoulder condition as an "obviously preexisting massive rotator cuff tear." (Joint Ex. 5, p. 128)

Dr. Broghammer considered the reported mechanism of injury and opined, "When considering the worker's mechanism of injury with his hand at approximately midbelly level, this would not put any significant strain on the rotation [sic] cuff." (Joint Ex. 5, p. 128) Ultimately, Dr. Broghammer concluded that the surgery recommended by Dr. Bollier "is entirely related to the worker's preexisting condition and unrelated to his alleged injury." (Joint Ex. 5, p. 129)

After receipt of Dr. Broghammer's opinion, defendants denied liability for the right shoulder surgery recommended by Dr. Bollier. Nevertheless, claimant elected to proceed with the surgery. Dr. Bollier took claimant to surgery on January 17, 2018 and performed a right shoulder arthroscopic rotator cuff repair, biceps tenotomy and capsular release. (Joint Ex, 3, p. 80)

During the surgery, Dr. Bollier identified and repaired tears in the subscapularis and infraspinatus tendons in claimant's right shoulder. (Joint Ex. 3, pp. 83-84) In a follow-up note, Dr. Bollier noted, "we were unable to repair the supraspinatus due to the chronicity of his cuff tear but were able to repair the infraspinatus and subscapularis." (Joint Ex. 3, p. 89)

Following post-surgical recovery, Dr. Bollier released Mr. Deutmeyer to return to normal work duties without restrictions as of April 1, 2018. (Joint Ex. 3, p. 92) However, in follow-up on May 3, 2018, Dr. Bollier recommended no lifting greater than five pounds. (Joint Ex. 3, p. 93) He advanced lifting to 15 pounds as of May 3, 2018 (Joint Ex. 3, p. 93)

In a post-operative physical therapy note in February 2018, claimant confirmed that he had a significant pre-existing history of right shoulder complaints and treatment. Specifically, Mr. Deutmeyer reported that he first tore his rotator cuff in the 1990s. He relayed the 2009 events with an MRI and opinions of his surgeon that he sustained sufficient atrophy and retraction of his rotator cuff tear that the shoulder could not be repaired at that time. Claimant also relayed the 2012 pop in his shoulder after carrying a gate. (Joint Ex. 4, p. 119)

On May 31, 2018, Dr. Bollier responded to an inquiry from claimant's attorney. In that report, Dr. Bollier opined, "I believe it is more likely than not that the 8/14/2017 work injury was a substantial contributing factor in causing a material aggravation of Mr. Deutmeyer's underlying right shoulder condition. The work injury also made the arthroscopy with rotator cuff repair surgery on the right shoulder necessary." (Joint Ex. 3, p. 97) On August 6, 2018, Dr. Bollier discontinued physical therapy and lifted the lifting restrictions on claimant's right shoulder, permitting him to return to work without restrictions. (Joint Ex. 3, p. 100)

On November 5, 2018, Dr. Bollier responded to an inquiry from defense counsel. In that report, Dr. Bollier indicated that he was not aware of claimant's pre-existing medical records and did not review those records prior to rendering his causation opinions in the May 31, 2018 letter. In the November 5, 2018 report, Dr. Bollier

retracted his prior opinion, indicating, “Contrary to what Mr. Deutmeyer told us, he was treated for a right shoulder rotator cuff tear at the VA from 2009-2017. MRI at the VA showed massive rotator cuff tear that was a pre-existing condition.” (Joint Ex. 3, p. 108) After reviewing and considering the additional medical records, Dr. Bollier opined, “The treatment we provided (rotator cuff repair) was most likely related to his pre-existing shoulder condition.” (Joint Ex. 3, p. 108)

Claimant obtained an independent medical evaluation, performed by Robin L. Sassman, M.D., on March 18, 2019. Dr. Sassman reviewed at least some of claimant’s prior medical records dating back to 2008. (Joint Ex. 6, pp. 131-133) Dr. Sassman diagnosed claimant with a right rotator cuff tear involving the subscapularis and labrum tear with the previous rotator cuff tears of the supraspinatus and infraspinatus. (Joint Ex. 6, p. 139)

Dr. Sassman acknowledges the prior issues with claimant’s right rotator cuff. She explains that the rotator cuff is made up of four muscles, including the supraspinatus, infraspinatus, subscapularis, and teres minor. She noted that the 2010 MRI demonstrated a full-thickness tear of the supraspinatus with retraction. That same MRI also demonstrated at least a partial tear of the infraspinatus tendon. (Joint Ex. 6, pp. 139-140)

Dr. Sassman further notes that the 2011 MRI demonstrates similar pathology of only the supraspinatus and infraspinatus tendons. However, Dr. Sassman opines that claimant was getting along pretty well in spite of these rotator cuff injuries prior to the August 2017 work injury. She noted that an MRI after the work injury demonstrated the pre-existing rotator cuff tears. However, she noted that the subsequent MRI also documented inferior labrum tears and subscapularis tendinopathy. Dr. Sassman opines:

> Given the changes on the MRI after the injury on 8/14/17, and the worsening of his symptoms, as well as the mechanism being consistent with the injury, I conclude that the injury that occurred on 8/14/2017 was a substantial aggravating factor of the right rotator cuff injury and necessitated the procedure done on 1/17/18 by Dr. Bollier.

(Joint Ex. 6, p. 140)

Dr. Sassman declared maximum medical improvement one year after surgery, or January 17, 2019. She opined that claimant required no further treatment, required no work restrictions for his current job, but that he sustained a permanent impairment equal to eight percent of the right upper extremity, or five percent of the whole person. (Joint Ex. 6, pp. 170-171)

Defendants asked Dr. Bollier to review and comment upon the opinion of Dr. Sassman. In a report dated August 12, 2019, Dr. Bollier noted that he disagreed with Dr. Sassman’s opinions. He pointed out that Dr. Sassman identified inferior labral

tearing as a new finding after the work injury. However, Dr. Bollier pointed out that he identified no labral tearing during his intra-operative inspection of claimant's right shoulder. (Joint Ex. 3, p. 115) Dr. Bollier reiterated his opinion "that Mr. Deutmeyer's massive rotator cuff tear was a pre-existing condition and not materially aggravated by the alleged work incident on August 14th, 2017." (Joint Ex. 3, p. 115)

Claimant similarly asked Dr. Sassman to review and comment upon Dr. Bollier's supplemental report. Dr. Sassman critiques Dr. Bollier's opinion indicating that he offers no explanation why claimant's functional abilities changed significantly after the August 2017 work injury. She reiterates that the MRI performed after the August 2017 work incident demonstrated changes such as inferior labrum tearing and subscapularis tendinopathy. (Joint Ex. 6, p. 144)

Ultimately, this case comes down to a determination of which medical expert opinion should be accepted as the most convincing and accurate on the issue of causation. Claimant clearly had significant right shoulder pathology prior to the August 2017 injury date. In this sense, Dr. Broghammer was accurate in noting the retraction of the rotator cuff demonstrating a chronic injury. However, Dr. Broghammer did not have the benefit of reviewing all of claimant's pre-existing medical records. He performed a one-time evaluation. Ultimately, I do not find Dr. Broghammer's opinions to be convincing standing on their own.

Dr. Bollier is the treating surgeon in this case. He evaluated claimant more than once. He performed surgery on claimant's right shoulder and had the benefit of inspecting claimant's shoulder joint intra-operatively. He initially provided a causation opinion that benefited claimant and suggested that this case was compensable. However, upon presentation of additional information, including significant pre-existing medical records, Dr. Bollier changed his causation opinion.

Claimant critiques Dr. Bollier because of this change in opinion. I do not perceive Dr. Bollier's change in opinion to be a demonstration of bias or error. Rather, it appears that Dr. Bollier was attempting to give an honest, orthopaedically sound medical causation opinion based upon the information he had available at all times. Given the history provided by claimant at the time of his initial evaluation, Dr. Bollier opined that the work incident caused a material aggravation of claimant's condition. After reviewing the entirety of the prior medical evidence and having had a chance to inspect the shoulder intra-operatively, Dr. Bollier changed his medical causation opinion. I find Dr. Bollier's opinions to be credible and convincing in this record.

Dr. Sassman provides a viable medical opinion. She considers the pre-existing medical conditions, explains why she believes claimant sustained new pathology in the shoulder joint as a result of the August 2017 work incident. However, when I review Dr. Sassman's opinion and put it into context with the response from Dr. Bollier, I do not find it to be as convincing.

Dr. Sassman logically concludes that a material aggravation occurred in August 2017 because the subsequent MRI demonstrated objective changes, including labral tearing and tendinopathy of the subscapularis. However, Dr. Bollier documents in his operative report and subsequent report that the findings of the MRI were erroneous. He inspected the shoulder joint and found no labral tearing and actually found a tear (as opposed to merely tendinitis) of the subscapularis, which he repaired. In other words, the findings of the MRI were not born out by the operative findings. Dr. Sassman's reliance upon the MRI findings is less convincing than the actual intra-operative findings documented by Dr. Bollier.

I find that Dr. Bollier has superior credentials as an orthopaedic surgeon on the issue of shoulder pathology and causation of this type of injury. Dr. Bollier has superior information and surgical evaluation. He received the pre-existing medical records and had the opportunity to inspect the right shoulder joint during surgery. I perceive the change in opinion by Dr. Bollier to be an honest and appropriate change in medical opinion given the new evidence of pre-existing pathology and intra-operative findings. Dr. Bollier initially provided an opinion beneficial to his patient but subsequently changed that opinion after consideration of all evidence.

I find the November 5, 2018 and August 12, 2019 opinions and reports of Dr. Bollier most convincing and most accurate opinions in this evidentiary record. I find that Dr. Broghammer's opinions generally support the opinions of Dr. Bollier on the issue of causation. To the extent that Dr. Broghammer's opinions are consistent with Dr. Bollier's opinions, I also accept those opinions. Therefore, I find that claimant failed to prove he sustained a permanent injury or a permanent and material aggravation of a pre-existing condition in his right shoulder as a result of the August 14, 2017 work incident. I find that claimant experienced an increase in symptoms on that date and that he required initial medical treatment after that increase in symptoms.

However, I find that the surgery performed by Dr. Bollier was not caused by the August 2017 work incident, nor was any treatment after the date of surgery. Claimant seeks award of past medical expenses contained in Claimant's Exhibits 4 and 5. Review of the medical bills demonstrate that defendants failed to pay for Dr. Bollier's office visit occurring on September 18, 2017. (Claimant's Ex. 4, p. 18) That evaluation was at the recommendation and referral of the authorized medical provider. Defendants did not obtain the opinion of Dr. Broghammer until October 2017 and clearly had not denied this claim as of the evaluation by Dr. Bollier in September 2017.

Similarly, there are medical expenses for treatment at Regional Medical Center, right shoulder x-rays, and a right shoulder MRI on August 16, 2017. (Claimant's Ex. 4, pp. 28-30) Defendants continued to authorize care as of this date. I find this was authorized medical care.

Mr. Deutmeyer asserts claims for medical mileage. All medical mileage contained in Claimant's Exhibit 5 occurred after the IME performed by Dr. Broghammer and relates to pre-operative evaluation or treatment for or after the right shoulder

surgery in January 2018. I find this treatment was not authorized or causally related to the work incident on August 14, 2017.

Claimant also seeks temporary disability benefits from January 17, 2018 through April 1, 2018. Having found that claimant did to prove the January 17, 2018 surgery was causally related to the work incident, I similarly find that the time off work during recovery after the January 17, 2018 surgery is not causally related to the August 14, 2017 work incident. Claimant failed to prove permanent disability related to the August 14, 2017 work injury.

CONCLUSIONS OF LAW

The initial dispute between the parties is whether claimant proved he sustained an injury on August 14, 2017, which arose out of and in the course of his 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).

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

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

In this case, I found the medical opinions of Dr. Bollier and to a lesser extent those of Dr. Broghammer to be the most convincing and credible. Having accepted those opinions, I found that claimant proved he sustained an increase in symptoms on the date of injury. However, I found that claimant failed to prove a permanent injury or a material aggravation of his pre-existing right shoulder condition as a result of the August 14, 2017 work incident. Specifically, I found that claimant failed to prove the surgery performed by Dr. Bollier was causally related to the work incident.

However, having found that claimant experienced an increase in symptoms after the August 14, 2017 work incident, I must also consider his claims for temporary disability, permanent disability, and past medical expenses. Claimant asserts a claim for temporary disability, or healing period, from January 17, 2018 through April 1, 2018.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing

period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Having found that claimant failed to prove a causal connection between the January 17, 2018 surgery and the August 14, 2017 work incident, I conclude that none of the temporary disability claimed after January 17, 2018 is compensable.

Mr. Deutmeyer also asserts a claim for permanent disability. Once again, claimant bears the burden to establish a causal connection between the August 14, 2017 work injury and his claim for permanent disability. Having accepted the opinions of Dr. Bollier, I find that claimant failed to prove he sustained permanent disability as a result of the August 14, 2017 work incident. Therefore, I conclude that the claim for permanent disability benefits should be denied.

Mr. Deutmeyer asserts a claim for past medical expenses and medical mileage contained at Claimant's Exhibits 4 and 5. 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 employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Having found that the medical mileage contained at Claimant's Exhibit 5 is not causally related to the August 14, 2017 incident, I conclude the claim for medical mileage should be denied. Most of the medical expenses contained in Claimant's Exhibit 4 were also for treatment occurring on or after January 17, 2018, the date of claimant's right shoulder surgery. By that date, defendants had already denied the claim. Having found that claimant failed to prove causal connection between the August 14, 2017 work incident and the January 17, 2018 surgery (and treatment thereafter), I conclude that the majority of medical expenses contained in Claimant's Exhibit 4 should be denied.

However, reviewing Claimant's Exhibit 4, I identified medical expenses incurred prior to January 17, 2018. Specifically, I identified medical expenses contained at Claimant's Exhibit 4, pages 28 through 30, which represent treatment at Regional Medical Center, as well as right shoulder x-rays and a right shoulder MRI performed on August 16, 2017. As of that date, defendants had admitted liability and authorized medical care. Defendants did not obtain an independent medical evaluation from Dr.

Broghammer or deny liability until October 2017. In addition, I identified expenses for treatment rendered by Dr. Bollier on September 18, 2017. Again, this treatment was rendered before the claim was denied and Dr. Bollier's treatment was rendered at the recommendation of the authorized medical provider.

Iowa Code section 85.27 provides, "If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization." In this instance, there is no evidence that the employer denied liability or declined authorization of medical care prior to August 16, 2017 or September 18, 2017. Therefore, I conclude that defendants are liable for the medical expenses contained at Claimant's Exhibit 4, pages 18 and 28 through 30 for treatment rendered on August 16, 2017 and September 18, 2017.

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

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

However, Iowa Code section 85.39 establishes pre-requisites that claimant must meet before reimbursement of an independent medical evaluation is required of the defendants. First and foremost, an evaluation of permanent disability must be made by a physician chosen by the defendants before claimant obtains his independent medical evaluation.

In this case, defendants obtained an independent medical evaluation performed by Dr. Broghammer in October 2017. However, Dr. Broghammer's opinions were limited to causation and did not offer an opinion about permanent impairment. Both claimant and defendants obtained opinions from Dr. Bollier, but neither requested he address permanent impairment.

Having identified no permanent impairment opinions from a physician selected by defendants, I conclude that claimant failed to establish the initial pre-requisite of Iowa Code section 85.39 to obtain reimbursement of Dr. Sassman's fees under that statute.

Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843-844 (Iowa 2015).

The final disputed issue is whether costs should be assessed against either party. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. In this instance, claimant failed to prove entitlement to any benefits other than some very limited medical expenses. Exercising the agency's discretion, I conclude that all parties should bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall reimburse claimant, reimburse third-party payers, pay medical providers directly, and hold claimant harmless for all medical expenses contained in Claimants' Exhibit 4, pages 18, 28-30, for medical treatment and diagnostic testing rendered to claimant on August 16, 2017 and September 18, 2017.

All parties shall bear their own costs.

Defendant shall timely file all reports as required by 876 IAC 11.7.

Signed and filed this __12th___ day of March, 2020.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Emily Anderson (via WCES)

Jordan Kaplan (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.