

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN GRABOSCH,

Claimant,

vs.

ARCONIC, INC.,

Employer,

and

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA (TPA –
HELMSMAN MANAGEMENT
SERVICES, LLC),

Insurance Carrier,
Defendants.

File No. 19003230.01

ARBITRATION

DECISION

Head Note Nos.: 1100; 1108;
1400; 1402.30

STATEMENT OF THE CASE

The claimant, John Grabosch, filed a petition for arbitration seeking workers' compensation benefits from Arconic, Inc. ("Arconic"), and its insurer, Indemnity Insurance Company of North America. James Hoffmann appeared on behalf of the claimant. Jane Lorentzen appeared on behalf of the defendants.

The matter came on for hearing on November 17, 2020, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. An order issued on March 13, 2020, and updated June 1, 2020, August 14, 2020, and October 12, 2020, by the Iowa Workers' Compensation Commissioner, In the Matter of Coronavirus/COVID-19 Impact on Hearings (available online at: <https://www.iowaworkcomp.gov/order-coronavirus-covid-19> (last viewed December 29, 2020)) amended the hearing assignment order in each case before the Commissioner scheduled for an in-person regular proceeding hearing between March 18, 2020, and March 19, 2021. The amendment makes it so that such hearings will be held by internet-based video using CourtCall. The parties appeared electronically, and the hearing proceeded without significant difficulties. The matter was fully submitted on December 4, 2020, after briefing by the defendants. The claimant did not submit a post-hearing brief.

The record in this case consists of Joint Exhibits A-F. The claimant submitted an exhibit, but withdrew the exhibit at hearing as it was duplicative of an exhibit in the joint exhibits. Testimony under oath was also taken from the claimant, David Ellermets, and Jennifer Kruse. Delayne Johnson was appointed the official reporter and custodian of the notes of the proceeding.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. The disability is a scheduled member disability to the bilateral upper extremities.
3. The commencement date for permanent partial disability benefits, if any are awarded, is February 20, 2020.
4. The claimant's gross earnings were \$1,071.00 per week.
5. The claimant was married and entitled to two exemptions.
6. The weekly rate of compensation is \$688.43.

There is no longer any dispute as to entitlement to temporary disability and/or healing period benefits. There is no longer any dispute as to entitlement for credits to any award. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury arising out of and in the course of employment, and whether the injury occurred on January 1, 2019, or on January 30, 2019.
2. Whether the alleged injury is a cause of permanent disability.
3. The extent of permanent disability, if any is awarded.
4. Whether the claimant is entitled to reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.
5. Whether the claimant is entitled to an assessment of costs.

FINDINGS OF FACT

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

John Grabosch, the claimant, was 68 years old at the time of hearing. (Testimony). He worked for Arconic for about eight years prior to the alleged work incident. (Testimony). While working at Arconic, Mr. Grabosch held a variety of jobs. (Testimony). Mr. Grabosch worked as a roll grinder in the maintenance department for almost six and a half years. (Testimony). As a roll grinder, he would take large rolls into the shop and grind them to particular specifications. (Testimony). This required disassembling the rolls and bearings which weighed upwards of 30 to 40 pounds. (Testimony). The grinder that he used to grind the rolls was automated. (Testimony). After a few weeks, Mr. Grabosch would rotate onto another job and testified that he was “constantly doing different jobs throughout the time” he was at Arconic. (Testimony).

In October of 2018, Mr. Grabosch moved from roll grinding to production on the 84” Line and the 84-2” Line. (Testimony). Mr. Grabosch was trained on an entrance job, an exit job, and a rewind job for the 84” Line” and the 84-2” Line. (Testimony). The result was that Mr. Grabosch performed six different jobs. (Testimony). In the entry job, Mr. Grabosch readied coils of metal to be sent through the production line. (Testimony). This required cutting bands and feeding metal into a machine. (Testimony). In the exit job, Mr. Grabosch changed tubs of metal sheets using a forklift and would undo any jams that occurred. (Testimony). Mr. Grabosch also ran a crane, which moved pallets of aluminum to ship to different departments. (Testimony). When he ran the crane, he would push buttons on a pendant and walk with the crane. (Testimony and Video Evidence).

Mr. Grabosch agreed that his job varied on a day-to-day and week-to-week basis. (Testimony). He did not use vibratory tools, but used a hammer from time to time on a limited basis. (Testimony). At times, he would need to hammer a screwdriver under a band on a coil of metal. (Testimony). He did this 9 to 11 times during a 12 hour day. (Testimony). He lifted sheets of aluminum if there was a jam, but noted that this was not a daily activity. (Testimony). Mr. Grabosch testified that when there was a jam, the line would be down for two to three hours, during which time he would not work. (Testimony).

David Ellermets, a process improvement engineer at Arconic and Mr. Grabosch’s former supervisor, also testified at the hearing. (Testimony). Mr. Ellermets began employment at Arconic in 2013 as a production operator, became a production supervisor in 2016, and shortly after became a process improvement engineer. (Testimony). He works on the production line to improve processes and address productivity issues. (Testimony). He clarified that much of Mr. Grabosch’s work involved pressing buttons on a crane. (Testimony). He testified that Mr. Grabosch’s

work was “not overly repetitive.” (Testimony). Mr. Ellermets disputed the frequency of jams that Mr. Grabosch stated occurred. (Testimony). Mr. Ellermets also testified that, in his time at Arconic, he had never witnessed the procedure described by Mr. Grabosch in which a hammer and screwdriver were used to break a band on a roll of metal. (Testimony). Mr. Ellermets indicated that this could damage the metal. (Testimony).

Jennifer Kruse also testified on behalf of the defendants. (Testimony). Ms. Kruse has a bachelor’s degree in athletic training and a master’s degree in human development. (Testimony). She works as an athletic trainer for Arconic. (Testimony). As an athletic trainer, she performs ergonomic assessments and injury investigations. (Testimony). She spoke with Mr. Grabosch after his carpal tunnel became symptomatic. (Testimony). Mr. Grabosch could not tell her what specific job duties increased his symptoms. (Testimony). Ms. Kruse testified that she maintained familiarity with the Department of Labor standards relating to occasional, frequent, and constant repetitive motion. (Testimony). Based upon her familiarity with those standards, and Mr. Grabosch’s job duties, Ms. Kruse opined that Mr. Grabosch had no work tasks that were repetitive in nature. (Testimony).

About ten and a half years before the injuries at the basis of this matter, Mr. Grabosch experienced bilateral carpal tunnel syndrome. (Testimony). At that time, Mr. Grabosch worked for Nichols Windstream. (Testimony).

Mr. Grabosch’s prior medical records were provided as exhibits. On November 17, 2008, Mr. Grabosch visited Genesis Health Group requesting clonazepam. (Joint Exhibit A:1). Mr. Grabosch returned to Genesis Health Group on December 22, 2008, with complaints of numbness in his hands and arms for the past several weeks. (JE A:1). The numbness began to happen during the day. (JE A:1). His provider referred him to another doctor for possible carpal tunnel syndrome. (JE A:1).

Mr. Grabosch reported to Brian J. Anseeuw, M.D., on January 13, 2009, for his carpal tunnel complaints. (JE B:3). He noted that his numbness progressively worsened and woke him from sleep. (JE B:3). Dr. Anseeuw scheduled Mr. Grabosch for an EMG and nerve conduction study. (JE B:3). Mr. Grabosch had an EMG on February 5, 2009. (JE B:5-7). The study showed evidence of “compressive neuropathy of both median nerves at the wrists, worse on the left.” (JE B:7).

On February 11, 2009, Mr. Grabosch returned to Genesis Health Group for a follow-up of his bilateral carpal tunnel syndrome. (JE A:2). Mr. Grabosch visited a neurologist that performed a nerve conduction study. (JE A:2). The nerve conduction study showed carpal tunnel syndrome that was worse in his right wrist than his left. (JE A:2). He was scheduled to see a Dr. Cobb to consider surgery. (JE A:2). On February 19, 2009, Mr. Grabosch received a referral to a surgeon regarding his bilateral carpal tunnel issues. (JE A:2).

On March 16, 2009, Mr. Grabosch reported to ORA Bone & Joint Centers for complaints of hand numbness and tingling. (JE C:10-11). He reported dropping objects such as coins and keys. (JE C:10). Mr. Grabosch reported that he shook his hands in the morning to “awaken them.” (JE C:10). His EMG was consistent with left hand severe median nerve compression and right moderate to severe nerve compression. (JE C:10). The provider recommended that Mr. Grabosch undergo a carpal tunnel release to both hands. (JE C:10).

On April 14, 2009, Mr. Grabosch had a right open carpal tunnel release at Quad City Ambulatory Surgery Center. (JE C:12). As of April 28, 2009, he was instructed to remain off work. (JE C:13).

On May 1, 2009, Mr. Grabosch had an open carpal tunnel release to his left wrist. (JE C:14). At his May 14, 2009, surgical follow-up he noted progress on his right side, and a return of sensation to his left fingers. (JE C:15). By June 9, 2009, Mr. Grabosch achieved maximum medical improvement (“MMI”), and could return to full unrestricted activities. (JE C:16).

Mr. Grabosch returned to ORA Bone & Joint Centers on October 15, 2009 with complaints of pain and tingling in his right thumb and index finger. (JE C:17). The provider gave Mr. Grabosch an injection into his thumb. (JE C:17).

On July 12, 2010, Mr. Grabosch again returned to ORA Bone & Joint Centers with complaints of catching and locking in his left thumb. (JE C:18). He also reported numbness of the right thumb and index finger. (JE C:18). He noted that this was unchanged from his postoperative status and to some degree it was getting worse. (JE C:18). The treating physician, Mark Stewart, M.D., advised Mr. Grabosch to undergo an A1 pulley release if this still bothered him. (JE C:18).

At the time that Mr. Grabosch began work for Arconic he suffered no lingering issues from his previous carpal tunnel syndrome and resulting surgeries. (Testimony). Mr. Grabosch took, and passed, a physical prior to commencing work with Arconic. (Testimony). Mr. Grabosch claimed that in late January of 2019, he began to experience numbness in his hands. (Testimony). He also began to drop things and the numbness affected his work. (Testimony). Mr. Grabosch could not articulate at the hearing which elements or duties of his job caused him increased pain or issues. (Testimony). He indicated that the symptoms experienced in early 2019 were the same that he experienced in 2009. (Testimony).

On January 10, 2019, Mr. Grabosch reported again to ORA Orthopedics. (JE C:19-20). Dr. Stewart examined him again for complaints of bilateral hand numbness. (JE C:19). Mr. Grabosch reported the numbness occurred for about two months and was getting worse. (JE C:19). His pain and numbness did not radiate, but woke him from sleep. (JE C:19). Dr. Stewart found slightly positive median nerve compression testing bilaterally. (JE C:19). Dr. Stewart recommended further EMG testing. (JE C:19).

The EMG and nerve conduction studies were repeated on January 16, 2019, due to complaints of bilateral hand numbness. (JE B:8-9). Dr. Anseeuw noted an abnormal study showing electrophysiological evidence of compressive neuropathy of the right median nerve at the wrist. (JE B:9).

On January 29, 2019, Mr. Grabosch returned to Dr. Stewart's office following his EMG and nerve conduction studies. (JE C:23). Mr. Grabosch continued to complain of numbness in each hand. (JE C:23). He again reported dropping keys and small objects, and noted that his work activities bothered him. (JE C:23). Dr. Stewart noted that the EMG showed compression of the median nerve, especially on the right, but also on the left. (JE C:23). Dr. Stewart recommended staged carpal tunnel releases. (JE C:23). Mr. Grabosch noted to Dr. Stewart that "he is going to report this as a workers' comp injury." (JE C:23).

At this time, Mr. Grabosch informed Arconic of his carpal tunnel syndrome recurring. (Testimony). Mr. Grabosch testified that Arconic sent him to a company physician who instructed him to come back whenever he had symptoms. (Testimony). This displeased Mr. Grabosch because he felt he needed to have surgery to his hands in order to resolve his problems. (Testimony). Mr. Grabosch continued to report to the company medical area and was displeased that surgery was not authorized. (Testimony).

Denise Wieberg of Helmsman Management Services drafted a letter to Jonathan Winston, M.D. of ORA Orthopedics on April 12, 2019. (JE D:24-25). The letter posed a series of questions for Dr. Winston to address. (JE D:24-25).

Dr. Winston replied to Ms. Wieberg's letter on May 1, 2019 noting that he performed an IME on Mr. Grabosch on the same day. (JE D:26-29). Dr. Winston noted Mr. Grabosch's current history. (JE D:26-27). Mr. Grabosch alleged that he reported his injury to Arconic on January 30, 2019, and that he had numbness and tingling in his hands. (JE D:26). Numbness and tingling worsened in the evening. (JE D:26). His symptoms were worse on the right than the left. (JE D:26). Mr. Grabosch reported pushing buttons at Arconic, using a hammer every other week, and lifting objects off the floor. (JE D:27). Mr. Grabosch reported pulling on a rope several weeks prior, which aggravated his symptoms. (JE D:27). Dr. Winston noted that the January, 2019, nerve study showed an improvement over the 2009 nerve study. (JE D:27). Dr. Winston diagnosed Mr. Grabosch with recurrent carpal tunnel syndrome that was not caused by his job activities, but rather his "index injury." (JE D:28). However, Dr. Winston concluded the repetitive nature of Mr. Grabosch's employment caused a substantial aggravation of his preexisting carpal tunnel syndrome. (JE D:28). Dr. Winston recommended no formal work restrictions, and indicated that Mr. Grabosch had a 50 percent chance of improvement with a revision surgery. (JE D:28). Dr. Winston recommended a diagnostic therapeutic injection. (JE D:28).

Dr. Winston confirmed, in a letter dated June 26, 2019, that the “index” surgery is the carpal tunnel release previously performed on both hands. (JE D:30). Mr. Grabosch subjectively indicated to Dr. Winston that on a repetitive basis, he lifted items between 2 and 20 pounds. (JE D:30). Dr. Winston offered to revise his opinion should information show that Mr. Grabosch did not perform these tasks on a regular basis. (JE D:30).

Mr. Grabosch testified that he scheduled carpal tunnel surgery on his own with Dr. Stewart and underwent the surgery in June of 2019, and then a second surgery in July of 2019. (Testimony). When Mr. Grabosch returned to work following his surgeries, he returned to the same job on the production line with no decrease in pay. (Testimony).

On October 16, 2019, ORA Orthopedics provided Mr. Grabosch with a return to work note indicating that he was able to return to work as of November 4, 2019, with no restrictions. (JE D:31).

In a letter dated November 4, 2019, Ms. Wieberg wrote to Dr. Winston indicating that Jennifer Kruse performed an ergonomic assessment of Mr. Grabosch’s job. (JE D:32-33). Ms. Kruse found no repetitive lifting of objects and that Mr. Grabosch lifted items infrequently. (JE D:32). Ms. Kruse also found that Mr. Grabosch hand banded flat sheets, but not more than one time per hour. (JE D:32). Dr. Winston also visited Arconic and witnessed different jobs being performed. (JE D:41).

On November 7, 2019, Mr. Grabosch filed a form with Arconic titled “Intent-to-Retire Notice Incentive for Arconic-Davenport Works USW & IBEW Employees.” (JE F:57). He indicated that he intended to retire on April 1, 2020. (JE F:57). By submitting this form, Mr. Grabosch was entitled to a \$500 payment, less applicable taxes. (JE F:57).

Arconic issued a written warning to Mr. Grabosch for an improper report of an absence on December 14, 2019. (JE F:56).

Ms. Wieberg sent another letter to Dr. Winston on February 10, 2020, asking the same questions and requesting again that Dr. Winston change his opinion. (JE D:41-42). Dr. Winston was provided with, among other things, a video of Mr. Grabosch’s job activities. (JE D:41-42). After reviewing the provided documentation, Dr. Winston replied on March 3, 2020. (JE D:43). Dr. Winston changed his opinion and noted, “I do not feel that the amount of activity he is doing is enough repetitive activity to cause his recurrent carpal tunnel syndrome.” (JE D:43). Dr. Winston concluded, “Again, his diagnosis of recurrent carpal tunnel syndrome is caused by his prior carpal tunnel release and because his job is not doing repetitive forceful activities, and instead it is more ergonomic in nature, his job is not causing or contributing to his symptoms in any way.” (JE D:43).

On February 20, 2020, at the direction of claimant's counsel, the claimant visited Sangeeta Shah, M.D., C.I.M.E., for an IME. (JE E:46-54). Dr. Shah's letterhead indicates that she is the head of the neurology department at Mercy One Medical Center in Waterloo, Iowa. (JE E:46). Dr. Shah noted Mr. Grabosch's history of manual work including removing bands from rolls of metal and readying them for the machine. (JE E:46). Mr. Grabosch noted symptoms beginning in December of 2018, including dropping things and difficulty holding onto keys. (JE E:46). He also experienced numbness of his hands. (JE E:46). Dr. Shah reviewed Mr. Grabosch's medical history, and mentioned his previous carpal tunnel syndrome. (JE E:46-50). Mr. Grabosch indicated to Dr. Shah that he continued to have pain in both of his hands. (JE E:50). He also had difficulty gripping, grasping, and lifting things, along with sleeping. (JE E:50). He reported that the right was worse than the left. (JE E:50). Upon examination, Dr. Shah found a lack of sensation in the right median nerve distribution. (JE E:51). Dr. Shah's impression of Mr. Grabosch's conditions was:

1. Carpal tunnel syndrome status post release with residual symptoms of severe pain and decreased sensation in the median nerve distribution.
2. Severe carpal tunnel syndrome at the left wrist with severe numbness, pain and weakness of the left hand in the distribution of the median nerve.

(JE E:52).

With regard to causation, Dr. Shah opined that Mr. Grabosch's symptoms had completely resolved until 2018. (JE E:52). Dr. Shah noted the following occupational factors can cause or aggravate carpal tunnel syndrome: repetitive hand and wrist use; forceful hand and wrist use; work with vibrating tools; sustained wrist or palm pressure; prolonged wrist extension and flexion; and, use of hands in cold temperatures. (JE E:52-53). Dr. Shah indicated that if Mr. Grabosch's condition was secondary to his prior surgery, symptoms would have recurred within one to two years due to scar tissue. (JE E:52). In this case, Dr. Shah opined that Mr. Grabosch's symptoms happened secondary to his repetitive use of his hands at work. (JE E:52). Dr. Shah's diagnoses included bilateral carpal tunnel syndrome "S/P surgery" for bilateral carpal tunnel, and left knee injury in the past with no residual deficit. (JE E:53). Dr. Shah opined that Mr. Grabosch reached MMI. (JE E:53). Dr. Shah provided an impairment rating for Mr. Grabosch's right upper extremity of 10 percent. (JE E:53-54). Dr. Shah translated this to a 6 percent impairment of the whole person. (JE E:54).

Regarding the left upper extremity, Dr. Shah opined that Mr. Grabosch suffered a 2 percent impairment of the upper extremity. (JE E:54). Dr. Shah translated this to a 1 percent impairment of the whole person. (JE E:54). Utilizing the combined value chart in the Guides, Dr. Shah opined that Mr. Grabosch suffered a 7 percent whole person impairment. (JE E:54). Dr. Shah did not provide a combined rating based upon his upper extremity impairments. (JE E:54).

On May 1, 2020, Mr. Grabosch formally retired from Arconic. (JE F:58). He testified that his retirement had nothing to do with his injury, but had to do with his age and desire to “kick back and enjoy life a little bit.” (Testimony).

Mr. Grabosch reported residual problems with his grip, and testified that his grip power was not as strong as prior to his surgery. (Testimony). His numbness dissipated, though he noted some continued numbness in his thumb and index finger. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3)(f).

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence that the employee's injuries arose out of, and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). 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. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that an injury occurs “in the course of employment” when:

[i]t is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979). Whether a claimant's injury arises out of the claimant's employment is a “mixed question of law and fact.” Lakeside Casino v. Blue, 743 N.W.2d 169, 173 (Iowa 2007).

In this case, Mr. Grabosch alleges that he either had a new occurrence of bilateral carpal tunnel syndrome, or that his work at Arconic substantially worsened or aggravated his bilateral carpal tunnel syndrome. The parties do not dispute that Mr. Grabosch has carpal tunnel syndrome; however, they dispute whether his carpal tunnel syndrome arose out of and in the course of his employment with Arconic. Claimant's own expert, Dr. Shah, notes that the following are some occupational causes of carpal tunnel syndrome: repetitive hand and wrist use; forceful hand and wrist use; work with vibrating tools; sustained wrist or palm pressure; prolonged wrist extension and flexion; and, use of hands in cold temperatures. In this case, testimony indicated that Mr. Grabosch did not work with vibrating tools. He did not do any task in a repetitive manner according to Department of Labor standards as observed by Ms. Kruse. Mr. Grabosch also indicated that any lifting described to Dr. Winston as repetitive was actually lifting done by a crane. The only fact that Mr. Grabosch can point to in support of his argument that his injury arose out of and in the course of his employment with Arconic is that the symptoms of his carpal tunnel syndrome occurred and that he worked at Arconic for a time between his 2009 surgeries and a recurrence of his carpal tunnel syndrome.

Dr. Shah opines that Mr. Grabosch's carpal tunnel syndrome is caused by his employment. After further review of the entire record, Dr. Winston disagrees. In this case, Dr. Winston was in a better position than Dr. Shah to opine on this matter as Dr. Winston reviewed the medical reports, the report of Ms. Kruse, the video evidence, and visited Arconic. I find Dr. Winston's opinion more credible as it relates to causation.

Based upon the foregoing evidence, I find that Mr. Grabosch failed to prove by a preponderance of the evidence that his carpal tunnel syndrome arose out of and in the course of his employment with Arconic.

Considering the above finding, the claimant would not be entitled to compensation for permanent disability. An analysis of causation of permanent disability and/or the extent of permanent disability are not necessary.

Reimbursement for an IME pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

Iowa Code 85.39(2).

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 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).

Iowa Code 85.39 was amended in 2017. Iowa Code 85.39(2) added:

An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code 85.39(2) (2017).

The claimant requests reimbursement for the IME of Dr. Shah. Joint Exhibit E:55 includes the invoice for Dr. Shah's IME and report, which totals \$2,850.00. Prior to attending the IME with Dr. Shah, Mr. Grabosch attended an IME with Dr. Winston. Dr. Winston did not provide an impairment rating. The undersigned found that the claimant's injury did not arise out of and in the course of employment. This makes Mr. Grabosch's injury not compensable. Pursuant to Iowa Code 85.39(2), the claimant is not entitled to reimbursement for Dr. Shah's IME.

Costs

Claimant seeks the award of costs. Costs are assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners'

reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

I decline, in my discretion, to award costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

The claimant shall take nothing further.

That defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 4th day of March, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Valerie Landis (via WCES)

Jane Lorentzen (via WCES)

Joshua Duden (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.