BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LUCAS GRUETZMACHER, Claimant, vs. JOHN DEERE DAVENPORT WORKS, Self-Insured Employer, Defendant.	File No. 22001746.01 ARBITRATION DECISION Headnotes: 1100; 1108; 1400; 1401; 1402; 1402.30; 1402.40; 1800; 1803;3700

STATEMENT OF THE CASE

The claimant, Lucas Gruetzmacher, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer John Deere Davenport Works ("John Deere"). James Hoffman appeared on behalf of the claimant. Benjamin Patterson appeared on behalf of the defendant.

The matter came on for hearing on May 8, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

Prior to the hearing, both the claimant and the defendant submitted certain motions. Argument on the motions was heard at the outset of the hearing. On April 27, 2023, the claimant submitted a motion for leave to file a report after the deadline, or in the alternative a motion to continue. The motion to continue was denied, as the matter was hearing-ready, but for the potential inclusion of a report of a "treating surgeon," Dr. Hoffman. The motion argued that Dr. Hoffman was on vacation or in surgery, so he could not complete an impairment rating until "approximately May 6." The claimant requested leave to introduce the physician's report when received.

At hearing, the defendant objected to inclusion of the report. Upon oral argument, claimant's counsel cited to changes made to Iowa Code section 85.39 in July of 2017. Specifically, the claimant alleged that a claimant could not "get paid an IME…until after the defendant…gets their report on percentages or no percent." Based upon this, the claimant argued that the defendant was "playing a trick on the claimant by waiting till [*sic*] it's totally and completely impossible and [*sic*] allow them only the ability to introduce their rendition of what percentages may apply." The claimant argued that they attempted to

comply with certain deadlines, but could not get the report ahead of the hearing or within the deadlines allowed for by the Hearing Assignment Order.

The defendant indicated that their objection to the motion was that Dr. Hoffman declared the claimant to have achieved maximum medical improvement ("MMI") in July of 2022. The defendant argued that Dr. Garrels also assessed an impairment rating of zero percent in July of 2022. The defendant aptly noted that, at any time after July of 2022, the claimant could have received an impairment rating pursuant to Iowa Code section 85.39. However, according to the defendant, it was not until April 17, 2023, that the claimant named Dr. Hoffman as a provider who would give an opinion as to permanent impairment.

876 Iowa Administrative Code 4.19(3)(b) provides the rule for introducing evidence from expert witnesses. While the certification of expert witnesses is not required as it relates to a treating physician, provided all parties are aware of the physician, the reports "are served on opposing parties prior to the date when certification is required." See 876 Iowa Administrative Code 4.19(3)(b). For a claimant, this would be 120 days before the hearing; for a defendant this would be 90 days before the hearing; and for a rebuttal report, this would be 60 days before the hearing. Id. Additionally, 876 Iowa Administrative Code 4.19(3)(c) requires that the parties serve all discovery responses, depositions and reports from independent medical examinations on opposing parties at least 30 days before the hearing. The claimant failed to meet this well-known and well-established deadline. The claimant was declared at MMI and provided with a zero percent impairment rating in July of 2022. The claimant had ample opportunity to obtain an impairment rating prior to the hearing, and failed to do so. The evidence shows that, despite the claimant's arguments that they were unable to obtain an IME without using the procedures of Iowa Code section 85.39, they would have had seven months in which to obtain an impairment rating and report from Dr. Hoffman (or any doctor of their choosing). I would note that the claimant had their evaluation by Dr. Hoffman in late April of 2023. This is likely inside of the deadlines established in our rules. Also, the provisions of reimbursement for the reasonable costs of an IME, pursuant to Iowa Code section 85.39, were triggered by the zero percent impairment rating issued by Dr. Garrels in July of 2022. To allow the claimant to introduce a report at such a late time, in contravention of well-established and well-known rules, would prejudice the defendant. Effectively, the claimant is attempting to do what they accuse the defendant of pursuing, namely, a trial by surprise. Our system is set up to avoid a trial by surprise, and it creates inherent prejudice against one party to allow another to simply disregard the rules and serve a report in contravention of our rules.

The objection was sustained, the motion was denied, and the record was not held open to receive the report of Dr. Hoffman.

It should be noted that the claimant reiterated their motion in their post-hearing brief. My decision remains the same, and additional evidence from Dr. Hoffman was not received into the record.

The defendant filed a motion to submit the testimony of Clarissa DeMeyer, a registered nurse who examined and treated the claimant. The defendant argued that Ms. DeMeyer was set to testify in person, but could not make the hearing as she had an ill child. Since she could not attend the hearing, the defendant proposed taking her deposition after the hearing and holding the record open for submission of the deposition testimony. The defendant admitted upon questioning by the undersigned that Ms. DeMeyer was not listed as a testifying witness on the witness and exhibit lists exchanged between the parties on April 10, 2023. The defendant argued that Ms. DeMeyer was a witness that fell under a "catch-all" provision in their witness and exhibit list of "any witness for the purpose of rebuttal and/or impeachment." (Transcript).

The claimant objected to the motion, initially simply because their competing motion was denied. After the undersigned noted that their argument should be based in some sort of substance rather than simply "tit-for-tat," the claimant presented an argument for their objection. The claimant argued that Ms. DeMeyer was not listed as a witness on the witness and exhibit lists exchanged by the parties ahead of the hearing, and therefore, her deposition should not be included in the record.

876 Iowa Administrative Code 4.19(3)(d) provides that, "[a]t least 30 days before hearing, counsel of record….shall serve a witness and exhibit list on all opposing counsel…and exchange all intended exhibits that were not previously required to be served." The witness list should contain "all persons, except the claimant, who will be called to testify at the hearing or who will be deposed prior to the hearing in lieu of testifying at the hearing." See 876 Iowa Administrative Code 4.19(3)(d). The rule is specific in requiring the witness list to contain "all persons" expected to testify at the hearing, or to be deposed prior to the hearing. Much like my ruling on the previous motion, this ruling is to protect the claimant from a "trial by surprise." While the claimant would have had the opportunity to cross-examine the witness, the late disclosure of the witness is the issue here. The defendant had access to the medical records and could have named Ms. DeMeyer on their witness and exhibit list. Additionally, the argument that Ms. DeMeyer is a rebuttal witness when no testimony had been elicited to which she may rebut strains credulity.

The motion was denied, the objection was sustained, and the record was not held open for submission of testimony via deposition.

Considering the foregoing, the record in this case consists of Claimant's Exhibit 1 and Defendant's Exhibits A-J. All of the exhibits were received into evidence without objection.

The claimant testified on his own behalf. Ricky Garrels, M.D. and Eddie Austin testified on behalf of the defendant.

Heidi Krafka was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted after the parties submitted post-hearing briefs on June 12, 2023.

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. That the claimant sustained an injury to his left shoulder, which arose out of, and in the course of employment on November 29, 2021.

3. That the alleged injury was a cause of temporary disability during a period of recovery.

4. That, at the time of the hearing, the claimant's gross earnings were eight hundred forty-three and 60/100 dollars ($843.60) per week, and that the claimant was single and entitled to three exemptions. Based upon the foregoing, the parties stipulated that the weekly compensation rate is five hundred fifty-three and 46/100 dollars ($553.46).

5. Under section 10, "Additional Issues, Stipulations, and/or Explanation", the parties stipulated as follows:

    a. That the defendant paid claimant two weeks of temporary total disability benefits from February 7, 2022 to February 20, 2022, at the stipulated rate.

    b. That the defendant paid claimant one week of temporary partial disability benefits from February 21, 2022 to February 27, 2022, in the amount of two hundred forty-five and 07/100 dollars ($245.07).

    c. That the defendant paid a total of eleven thousand nine hundred seventeen and 33/100 dollars ($11,917.33) to claimant's medical providers.

    d. That the defendant paid a total of two thousand six hundred ten and 30/100 dollars ($2,610.30) in transportation costs.

Entitlement to temporary disability and/or healing period benefits was no longer in dispute. Credits against any award are no longer in dispute as the defendant paid no weekly benefits to date. The defendant waived most of 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 to his right shoulder on November 29, 2021, that arose out of and in the course of his employment with the defendant.

2. Whether the alleged injury is a cause of permanent disability.

3. Whether the injury is an industrial disability.

4. The proper commencement date for permanent partial disability benefits, should any be awarded.

5. Whether the claimant is entitled to reimbursement for an IME pursuant to Iowa Code section 85.39.

6. Whether the claimant is entitled to a specific taxation of costs, and the amount of those costs.

7. Whether the defendant has proven their affirmative defense that the claimant did not provide timely notice of a right shoulder injury pursuant to Iowa Code section 85.23.

FINDINGS OF FACT

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

Lucas Gruetzmacher, the claimant, was 27 years old at the time of the hearing. (Testimony). He graduated from high school in 2012. (Defendant's Exhibit F:40). He then attended and earned a bachelor's degree from St. Ambrose University in 2021. (DE F:40). Mr. Gruetzmacher works for John Deere. (Testimony). At the time of the hearing, he had worked there for five years. (Testimony).

On November 29, 2021, while at work for John Deere, Mr. Gruetzmacher testified that he pulled an improperly placed 94.5-pound bumper for a loader frame towards him in order to place a lifting device on it. (Testimony). As he did this, he claims that both of his shoulders "popped." (Testimony). After feeling his shoulders pop, he "lost all strength in both shoulders" and experienced a burning sensation with numbness in his left arm. (Testimony). Mr. Gruetzmacher testified that he told his supervisor, Eddie Austin, that he injured both of his shoulders, did not have any strength in either arm, and could not continue to work. (Testimony).

After Mr. Austin took the claimant's injury report, he was sent to the onsite medical providers at John Deere on November 30, 2021. (Testimony; DE B:20-21). Mr.

Gruetzmacher complained of dull left shoulder pain at rest, and sharp left shoulder pain with activity. (DE B:20). He recounted how his injury occurred, including mentioning a pop in the left shoulder followed by burning, weakness, and numbness in his left shoulder. (DE B:21). Mr. Gruetzmacher told Ms. DeMeyer that the injury happened on November 29, 2021, at about 7:00 p.m., but that he did not report it at the time. (DE B:21). Instead, the claimant went to his chiropractor, but found that his symptoms worsened. (DE B:21). Dr. Garrels provided the claimant with restrictions and an order for physical therapy. (DE B:21).

An incident report was filled out and signed by the claimant on November 30, 2021. (DE B:11). The incident report recounted the claimant pulling a bumper towards himself when he felt a pop in his left shoulder followed by burning, numbness, and weakness in that shoulder. (DE B:11). At the time the report was filled out, the left shoulder had a dull ache at rest, and a sharp pain with activity. (DE B:11). The pain diagram showed marks to the front of the left shoulder, and nowhere else on the body. (DE B:11). Mr. Gruetzmacher noted a previous injury to his right shoulder, and that he played football. (DE B:11). Mr. Gruetzmacher testified that Mr. Austin filled out the form and reviewed it with him prior to his signing it. (Testimony).

There also was an A3 Accident Investigation Form completed by John Deere on November 30, 2021 and December 1, 2021. (DE C:22-23). The form outlined the incident, made no mention of the right shoulder, and provided potential corrective actions to prevent reoccurrence of a similar incident. (DE C:22-23).

On December 3, 2021, Mr. Gruetzmacher began physical therapy at John Deere's on-site facility with Beth Bryant, P.T. (DE B:19-20). The claimant recounted feeling a pop in his left shoulder followed by sharp pain and burning in his left arm. (DE B:19). He had no change in his symptoms despite working restricted duty. (DE B:19). At the time of therapy, his symptoms were localized to his left shoulder, and were aggravated by "everything." (DE B:20). He rated his pain between 4 out of 10 and 7 out of 10. (DE B:20). Mr. Gruetzmacher found that holding his arm in a "supported, close-packed position," to be best. (DE B:20). Upon examination, the claimant showed symptoms at the site of the attachment of the rotator cuff. (DE B:20). The record made no mention of any issue with his right arm. (DE B:19-20).

Mary Huesmann, N.P. examined the claimant on-site at John Deere on December 6, 2021. (DE B:18-19). Mr. Gruetzmacher reported that his symptoms were unchanged. (DE B:18). He displayed normal sensation in the left fingers and hand, but had pain if he laid on his left shoulder for a long time. (DE B:19). He took ibuprofen to alleviate the pain. (DE B:19). Mr. Gruetzmacher told the provider that he experienced decreased strength and decreased stability in his left arm and shoulder. (DE B:19). The provider verified these complaints through testing during the appointment. (DE B:19). He showed no pain during certain bilateral shoulder testing. (DE B:19). Again, there was no mention of any right arm issues. (DE B:18-19). The provider noted that an MRI arthrogram of the left shoulder was in the process of being scheduled. (DE B:19). A subsequent note in the record indicates that an MRI was scheduled for December 15, 2021. (DE B:18).

Michelle Whiteside, P.T. saw Mr. Gruetzmacher for another physical therapy appointment at John Deere on December 7, 2021. (DE B:17-18). The claimant showed the therapist where his pain began, which was the left long head of the biceps tendon origin. (DE B:17). Mr. Gruetzmacher opined that it felt "like it rolled on left" which caused him to guard his left upper extremity. (DE B:17). Mr. Gruetzmacher found that kinesiotape provided during his previous therapy visit helped support his left shoulder. (DE B:18). The therapist opined that the claimant had left shoulder pain with increased pain with O'Brien's testing of a labral lesion. (DE B:18). Ms. Whiteside found the claimant to have "AROM" and strength within functional limits. (DE B:18). There was no mention of right arm issues in the record. (DE B:17-18).

Mr. Gruetzmacher saw Ms. Whiteside for another physical therapy appointment on December 9, 2021. (DE B:17). Ms. Whiteside found that the claimant had no reported pain during passive range of motion in all planes for the left shoulder. (DE B:17). There was no mention of a right shoulder injury, or right shoulder pain in the medical record. (DE B:17).

Dr. Garrels visited with Mr. Gruetzmacher on December 15, 2021, following his MRI. (DE B:21a-b). Dr. Garrels is an employee of UnityPoint Health. (Testimony).

UnityPoint has a contractual relationship with John Deere to provide medical services to their employees at an onsite clinic. (Testimony). Dr. Garrels is board certified in occupational medicine. (DE I:47). Dr. Garrels diagnosed the claimant with a SLAP tear of the left shoulder. (DE B:21b). He recommended conservative treatment, but also made an orthopedic referral for the claimant. (DE B:21b).

An MRI performed on the same date showed minimal insertional tendinopathy of the intact inserting supraspinatus tendon. (Claimant's Exhibit 1:3). It also showed a "[p]rominent superior labral tear extending through the superior half of the anterior labral segment and the superior half of the posterior labral segment." (CE 1:3).

On January 18, 2022, the claimant reported to the offices of John Hoffman, M.D., at Orthopaedic Specialists. (DE D:24-25). Mr. Gruetzmacher relayed the history of his shoulder issue and work injury on November 29, 2021. (DE D:24). The history portion of the medical record contains no mention of the claimant's alleged right shoulder issue. (DE D:24). Mr. Gruetzmacher complained of dull and achy pain in the anterior aspect of his left shoulder. (DE D:24). He rated this pain 7 to 8 out of 10 at its worst. (DE D:24). Mr. Gruetzmacher indicated that physical therapy at work provided him with little improvement. (DE D:24). Upon physical examination, no issues were noted with the right shoulder. (DE D:25). The left shoulder had normal, but painful range of motion. (DE D:25). X-rays of the left shoulder were normal, but when Dr. Hoffman reviewed the MRI, he found tendinosis of the rotator cuff along with a large anterior to posterior labral tear with a SLAP tear. (DE D:25). Dr. Hoffman placed the claimant on one-handed work duty with no use of the left upper extremity. (DE D:25). Dr. Hoffman recommended that the claimant have surgery. (DE D:25).

Dr. Hoffman performed a left shoulder surgery on the claimant on February 9, 2022. (CE 1:4). He performed a left shoulder debridement of labrum, biceps tenodesis, and arthroscopic shoulder decompression. (CE 1:4). Dr. Hoffman's postoperative diagnoses was left shoulder superior labrum anterior and posterior lesion, biceps tendinosis, and impingement syndrome. (CE 1:4).

On February 11, 2022, the claimant had post-surgical therapy visit with Dr. Hoffman's office. (DE D:26). He reported soreness since the surgery but rated his pain 3 out of 10 during the visit and 8 out of 10 at its worst. (DE D:26). The examiner noted some issues with range of motion, and that they did not formally test the claimant's strength. (DE D:26).

Dr. Hoffman examined the claimant on April 19, 2022, for a post-surgical examination. (DE D:27). Mr. Gruetzmacher told the doctor that he had mild pain and was no longer taking pain medication. (DE D:27). Dr. Hoffman found that the claimant was improving with physical therapy and recommended that he continue the same. (DE D:27). Dr. Hoffman allowed the claimant to return to light duty work with restrictions including lifting 20 pounds to waist level, 10 pounds to chest level, and limited overhead work with the left shoulder. (DE D:27). Again, there was no mention of right shoulder issues. (DE D:27).

On May 17, 2022, Mr. Gruetzmacher returned to Dr. Hoffman's office. (DE D:28-29). He denied any pain, stiffness, numbness, or tingling in his left shoulder, and he continued to attend physical therapy. (DE D:28). The claimant again made no report of right shoulder issues. (DE D:28-29). He also had no tenderness to his right shoulder on physical examination. (DE D:29). Dr. Hoffman observed Mr. Gruetzmacher to have diffuse tenderness to the left shoulder; however, he had normal and pain-free active and passive range of motion. (DE D:29). Dr. Hoffman increased the claimant's restrictions by allowing him to lift up to 30 pounds to waist level, 15 pounds to chest level, and 10 pounds overhead with the left shoulder. (DE D:29). Again, there was no mention of any right shoulder issues. (DE D:29).

The claimant had another follow-up with Dr. Hoffman on June 23, 2022. (DE D:30-32). He again denied any pain, stiffness, numbness, or tingling. (DE D:30). He recovered well from his surgery and felt he was "ready to go to full duty work." (DE D:30). Accordingly, Dr. Hoffman returned the claimant to full duty work without restrictions. (DE D:30). Again, there was no mention of right shoulder issues. (DE D:30-32).

On June 23, 2022, Michael Matson, A.R.N.P. visited with Mr. Gruetzmacher as a follow-up on his left shoulder issues. (DE B:16). The claimant noted that he completed physical therapy following his surgery, that he was "doing well" and that surgery "fixed his problem." (DE B:16). He was released to work without restrictions by "his surgeon." (DE B:16). Mr. Matson observed that the claimant's left shoulder had full range of motion and excellent strength. (DE B:16). Mr. Matson allowed the claimant to return to work without restrictions. (DE B:16).

Dr. Garrels examined Mr. Gruetzmacher on July 5, 2022, at John Deere. (DE B:14-15). He noted Dr. Hoffman's release of the claimant to full duty, and that the claimant had no active complaints. (DE B:14). Dr. Garrels clarified that the meaning of "no active complaints" in the July 5, 2022, medical record, would include any complaints to the left or right shoulder. (Testimony). Dr. Garrels found the claimant to have full range of motion in his left shoulder and rated his strength 5 out of 5. (DE B:14). Dr. Garrels opined that the claimant achieved MMI. Dr. Garrels also noted that he would have tested both shoulders for range of motion and strength, as he compared the left shoulder measurements to the right shoulder measurements, and vice versa. (Testimony). Dr. Garrels used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide the claimant with a zero percent left upper extremity impairment rating based upon Figures 16-40, 16-43, 16-46, and Table 16-35. (DE B:15). Dr. Garrels elaborated on his impairment rating, including that his rating was based "pretty much [on] motion," and potentially strength. (Testimony). Dr. Garrels also testified that he did not touch the claimant in performing his range of motion measurements. (Testimony). The claimant contradicted this on rebuttal testimony in claiming that Dr. Garrels "physically manipulated" him during the evaluation. (Testimony).

The claimant testified that Dr. Garrels' note that he had full range of motion in his shoulder was not correct. (Testimony). He indicated that he only had full range of motion in his shoulder when the doctor exerted significant pressure on his shoulder and made him cry due to the pain. (Testimony). Dr. Garrels contradicted this insofar as he noted that the claimant had no pain behavior. (Testimony). According to Dr. Garrels, this means that he did not observe the claimant crying. (Testimony). He would have documented any crying or pain behaviors had the claimant exhibited the same. (Testimony). On rebuttal, the claimant testified that he cried in front of Dr. Garrels due to his pain, and that he cried after the appointment. (Testimony).

On July 19, 2022, Dr. Hoffman visited with Mr. Gruetzmacher again. (DE D:33-35). Mr. Gruetzmacher noted that he was disqualified from welding work due to his being unable to hold or lift the welding whip. (DE D:33). Mr. Gruetzmacher had minimal pain in the left shoulder, and moderate pain with pushing, pulling, overhead lifting, and reaching. (DE D:33). Upon examination, both shoulders were found to be normal, pain-free, and had normal range of motion. (DE D:33-34). There were no issues in the right shoulder noted. (DE D:34). Dr. Hoffman opined that the claimant had "done well with his left shoulder." (DE D:34). Mr. Gruetzmacher felt that he could pass the welding test, but noted the downgrade in his employment from welder. (DE D:34). Dr. Hoffman placed the claimant at MMI as of this visit. (DE B:34-35). Dr. Hoffman noted that an impairment rating would follow if requested. (DE B:35).

Amy Mitton, L.P.N. examined the claimant on July 22, 2022. (DE B:14). Mr. Gruetzmacher complained of right shoulder pain claiming an original date of injury in November of 2021. (DE B:14). Mr. Gruetzmacher claimed that he injured his right shoulder when he injured his left shoulder. (DE B:14). Dr. Garrels then examined the claimant. (DE B:13-14). Dr. Garrels documented that the claimant told him that his right

shoulder developed a popping sensation during high school. (DE B:13). Dr. Garrels documented that Mr. Gruetzmacher told Ms. DeMeyer that he had a prior right shoulder condition. (DE B:13). Dr. Garrels found the claimant to have full range of motion and no pain behavior in his right shoulder. (DE B:13). Based upon his examination, Dr. Garrels concluded that the claimant's right shoulder issues were not related to his work, and specifically not related to the November 29, 2021, injury. (DE B:13).

Dr. Garrels also provided testimony as to the July 22, 2022, visit. (Testimony). He noted that the claimant presented with right shoulder issues, that he was attempting to connect to the original injury. (Testimony). In response to this, Dr. Garrels reviewed the documentation from the original reporting of the injury with his staff. (Testimony). They concluded that there was no report of a right shoulder injury at the time of the initial examination. (Testimony). This included reviewing the initial incident report from November 30, 2021. (Testimony). Dr. Garrels testified that this was the first mention of right shoulder pain connected to a work injury on November 29, 2021, that he was aware of. (Testimony). He also noted his conclusion that the right shoulder was not a work-related issue. (Testimony). Dr. Garrels recalled the claimant outlining a previous injury to his right shoulder. (Testimony). This included development of a popping sensation dating back to his time in high school. (Testimony).

Counsel for the defendant drafted an e-mail to counsel for the claimant on August 6, 2022, indicating that John Deere would not be paying any permanent partial disability benefits for the claimant's right shoulder injury. (DE E:36-37). They indicated that this denial was based in the opinions of Dr. Garrels. (DE E:36-37). In the same e-mail, John Deere denied the claimant's right shoulder pain based upon the terms of Iowa Code section 85.23. (DE E:36).

On September 23, 2022, Sunil Bansal, M.D., M.P.H. examined the claimant for the purposes of an IME. (CE 1:1-9). The IME with Dr. Bansal was arranged at the behest of claimant's counsel. Dr. Bansal is board certified in occupational medicine. (CE 1:1). Dr. Bansal interviewed Mr. Gruetzmacher about his version of events surrounding his work injury. (CE 1:5). Mr. Gruetzmacher's description was generally consistent with the previous versions noted; however, he told Dr. Bansal that he experienced a burning pain in his right shoulder when he pulled the part in addition to the left shoulder issues. (CE 1:5). Mr. Gruetzmacher claimed to Dr. Bansal that he reported injuries to both shoulders to John Deere. (CE 1:5). Mr. Gruetzmacher told Dr. Bansal that his right shoulder and arm worsened over time and that he was told by the orthopedic surgeon that his shoulders would be addressed one at a time. (CE 1:5).

Dr. Bansal observed that Mr. Gruetzmacher could lift his right arm overhead, but that he could not lift a gallon of milk with his right arm. (CE 1:5). He also could not reach behind him with his right arm. (CE 1:5). Mr. Gruetzmacher complained of pain in his left shoulder while sleeping, though he acknowledged that the surgery greatly helped his left shoulder. (CE 1:5). Mr. Gruetzmacher told Dr. Bansal that he could still lift with his left arm, but that he could not lift for a long time. (CE 1:5).

Upon physical examination, Dr. Bansal observed that the claimant had diffuse tenderness to palpation in the right shoulder. (CE 1:6). He displayed range of motion as follows in the right arm:

Flexion:	168 degrees
Abduction:	143 degrees
Adduction:	46 degrees
External Rotation:	52 degrees
Extension:	41 degrees
Internal Rotation:	40 degrees

(CE 1:6).

His left arm displayed tenderness to palpation, especially at the acromioclavicular joint. (CE 1:6). Dr. Bansal observed that the claimant had a full range of motion in his left shoulder but had a 10 percent loss of strength with elbow flexion. (CE 1:6). Dr. Bansal observed the following ranges of motion in the claimant's left shoulder:

Flexion:	173 degrees
Abduction:	162 degrees
Adduction:	47 degrees
External Rotation:	75 degrees
Extension:	43 degrees
Internal Rotation:	56 degrees

(CE 1:6-7).

Mr. Gruetzmacher also displayed positive impingement tests to the right and left shoulders. (CE 1:6-7). Dr. Bansal repeated the diagnoses of Dr. Hoffman with regard to the claimant's left shoulder. (CE 1:7). He then diagnosed the claimant's right shoulder with a right shoulder strain, "with symptoms characteristic of rotator cuff and/or labral pathology." (CE 1:8). Dr. Bansal recommended that the claimant have an MRI of the right shoulder for further diagnosis. (CE 1:8). Dr. Bansal opined that the work incident on November 29, 2021, caused injuries to both of the claimant's shoulders. (CE 1:8). Dr. Bansal then used Figures 16-40 through 16-46 of the Guides to provide an impairment rating based upon the range of motion measurements provided above. (CE 1:8-9). Based upon these measurements, Dr. Bansal provided the claimant with a five percent upper extremity impairment to the left shoulder. (CE 1:9). According to the doctor, this rating amounts to a two percent impairment of the body as a whole. (CE 1:9). Dr. Bansal then provided an impairment rating of two percent of the upper extremity or one percent of the whole person based upon Table 17-35 of the Guides for the left biceps tendinopathy. (CE 1:9). For the range of motion issues found in the right shoulder, Dr. Bansal again used Figures 16-40 through 16-46 of the Guides to provide an eight percent upper extremity impairment for the right shoulder. (CE 1:9). This amounts to a five percent whole body impairment according to Dr. Bansal. (CE 1:9).

Mr. Gruetzmacher testified that he saw Dr. Hoffman in late April of 2023, and that Dr. Hoffman recommended that the claimant have surgery to his right shoulder or arm. (Testimony).

Mr. Gruetzmacher testified that he told the intake nurse, Clarissa DeMeyer, that he had issues with both of his shoulders. (Testimony). Mr. Gruetzmacher stated that the nurse indicated that only one shoulder would be treated at a time, and that they would begin by concentrating on his left shoulder. (Testimony). Mr. Gruetzmacher testified that in subsequent appointments with Ms. DeMeyer, Dr. Hoffman, and Dr. Garrels, he asked when treatment for his right shoulder would commence. (Testimony). He testified that "[t]hey always kept telling me, let's [*sic*] take care of the left first." (Testimony). Dr. Garrels contradicted the claimant's testimony in noting that he would have recorded any right shoulder issues in the medical record, had Mr. Gruetzmacher mentioned them. (Testimony). He also testified that he would have provided treatment for the claimant's right shoulder had it been mentioned. (Testimony).

Eddie Austin testified on behalf of the defendant. (Testimony). He is a team leader at John Deere, which essentially functions as a supervisor. (Testimony). He has been at John Deere for just over four years. (Testimony). As a team leader, Mr. Austin was available with the reporting requirements for work injuries. (Testimony). Among these requirements is to immediately report the injury to their supervisor. (Testimony). Following a report of injury, the individual is sent to the on-site medical clinic. (Testimony). Before the end of that day's shift, the team leader would fill out an "Accident Investigation Report," which is turned into the safety department. (Testimony).

Mr. Austin recalled that the claimant told him that he hurt his left shoulder on November 29, 2021, after pulling a part. (Testimony). He did not recall any mention of the right shoulder. (Testimony). During the hearing, he reviewed the "Accident Investigation Report," and reviewed portions mentioning an acute sprain or strain to the left shoulder. (Testimony). In filling out the documentation, Mr. Austin reviewed the report with the claimant. (Testimony). Mr. Austin testified that this information was obtained from the claimant and from the medical team. (Testimony). He agreed that, had Mr. Gruetzmacher mentioned his right shoulder, it would have been included in the report. (Testimony).

Dr. Garrels testified that he recalled treating the claimant for a shoulder injury, and that "it was a pretty uneventful case." (Testimony). He noted specifically that the claimant only had one shoulder injury. (Testimony). He recalled seeing the claimant and referring him to an orthopedic surgeon ahead of a surgery. (Testimony). Dr. Garrels also recounted his final visit with Mr. Gruetzmacher in which he cleared the claimant to work following the surgery. (Testimony).

The claimant testified to pain in his right shoulder when he moved his right arm above his head or outward from his body. (Testimony). He also noted an inability to support weight for a long period of time on the right side. (Testimony). By way of example, he testified to an inability to carry his one-year-old son, who weighed over 30 pounds. (Testimony). He also noted that he could not throw a ball with his right hand. (Testimony).

At the time of the hearing, Mr. Gruetzmacher testified to limitation in the range of motion in his left shoulder. (Testimony). He noted an inability to do everything he would want to do in playing with his children, nor could he play instruments, or play with his dogs. (Testimony). Mr. Gruetzmacher enjoyed riding his motorcycle, but could no longer do so after the left shoulder injury. (Testimony).

With regard to his position at John Deere, the claimant testified that he could no longer weld, as he could not control the "30-pound whip" for long enough periods of time. (Testimony). Since he was incapable of welding, the claimant was working in fabrication and cutting of sheet steel for John Deere. (Testimony). This position paid about two and 50/100 dollars ($2.50) less per hour than his position as a welder. (Testimony). He also testified to an inability to work overtime. (Testimony).

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.904(3).

Right Shoulder Injury

The parties previously agreed that the claimant's left shoulder injury arose out of, and in the course of his employment with John Deere. There is a dispute as to the claimant's alleged right shoulder injury. Before addressing the defendant's claimed affirmative defense, it is appropriate to first determine whether the alleged injury arose out of, and in the course of employment on November 29, 2021.

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:

> it 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).

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The claimant testified that he injured both of his shoulders during the November 29, 2021, incident. He further testified that he told a number of providers about his right shoulder injury, but that he was told that they would treat one shoulder at a time. Therefore, he claims that he was told that his right shoulder would be treated after his left

shoulder. He also points to Dr. Bansal's report. However, Dr. Bansal relied solely on the history provided by the claimant as to his right shoulder issues. While Dr. Bansal's examination showed some limited range of motion issues, his causation analysis and history was based entirely upon a subjective report from the claimant.

The defendant points to several key pieces of evidence. First, the incident report filled out by John Deere and assented to by Mr. Gruetzmacher makes no mention of a right shoulder injury as part of the November 29, 2021, work incident. A body diagram on the injury report shows only pain to the left shoulder. Mr. Gruetzmacher attempts to explain this away by indicating that someone else filled out the form and he only signed it. If Mr. Gruetzmacher wanted his right shoulder to be mentioned, it appears that he would have been free to correct the report based upon Mr. Austin's testimony that he reviewed the report with the claimant. In fact, the report indicates that Mr. Gruetzmacher had a prior right shoulder injury, and that he played football. Additionally, Mr. Austin testified credibly that he could recall no mention of an injury to the claimant's right shoulder.

Following his initial appointments, there is no mention of right arm issues throughout his treatment for his left shoulder. In fact, Dr. Hoffman, who is a doctor not located on-site with John Deere, examined both shoulders and continually found no tenderness to the claimant's right shoulder. Dr. Hoffman's records are also silent as to any history of a right shoulder injury dating to November 29, 2021.

It was not until July 22, 2022, that any record notes a right shoulder issue allegedly related to the November 29, 2021, work injury. In response to this, Dr. Garrels spoke to his staff and reviewed documentation to determine whether a right shoulder injury was previously mentioned. He found none. Dr. Garrels concluded that the right shoulder issue presented on this date was not the result of a work injury.

The claimant's testimony on this issue is also not entirely credible, when the weight of the evidence is overwhelmingly against his testimony. The claimant testifies that he told the providers that he was having right shoulder injuries; however, the records are silent as to any right shoulder issues related to the November 29, 2021, work incident until July 22, 2022, and Dr. Bansal's examination. There is no credible explanation as to why the medical records of multiple medical providers are silent.

In their post-hearing brief, the claimant points to potential bias on the part of Dr. Garrels by characterizing him as an employee of John Deere. This is patently false. Dr. Garrels testified credibly. He testified that he is an employee of UnityPoint Health, and that his employer has a relationship with John Deere to provide occupational medicine services. Pursuant to this agreement, he worked about 20 hours per week at John Deere. There is no evidence that Dr. Garrels has a contractual or employment relationship with John Deere.

Based upon the foregoing, the claimant failed to show, by a preponderance of the evidence, that he sustained a right shoulder injury that arose out of, and in the course of

his employment with John Deere. Considering this determination, there is no need to conduct any analysis as to the asserted affirmative defense.

Permanent Disability to the Left Shoulder

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).

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Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

The claimant alleges that he sustained permanent disability to both his left upper extremity and left shoulder as a result of the injuries sustained on November 29, 2021. The claimant injured his left shoulder. An MRI showed minimal insertional tendinopathy of the inserting supraspinatus tendon, and a "[p]rominent superior labral tear extending through the superior half of the anterior labral segment and the superior half of the posterior labral segment." Eventually, Dr. Hoffman performed a surgery on the claimant, which consisted of a debridement of the left labrum, a biceps tenodesis, and an arthroscopic shoulder decompression. Dr. Hoffman's postoperative diagnoses included a

left shoulder superior labrum anterior and posterior lesion, a biceps tenodesis, and impingement syndrome.

Mr. Gruetzmacher had a relatively uncomplicated recovery, according to treating physician Dr. Garrels. By June of 2022, the claimant complained of no stiffness, pain, numbness, or tingling in his left arm, and Dr. Hoffman noted that he recovered well from his surgery. On June 19, 2022, Dr. Hoffman released the claimant to return to work with no restrictions. Mr. Matson also allowed the claimant to return to work with no restrictions.

On July 5, 2022, Dr. Garrels examined the claimant and noted that he had no active complaints to his left shoulder. The doctor also found that the claimant had a full range of motion in his left shoulder with no strength issues. Dr. Garrels performed range of motion testing on the claimant. He testified that he did not touch or manipulate the claimant during this examination. The claimant contradicted this during his rebuttal testimony, but his testimony as noted above was less credible than that of Dr. Garrels insofar as he claimed to have cried in front of Dr. Garrels during the examination, and then after the examination. Dr. Garrels' contemporaneous medical record contradicts this, in that it indicates the claimant exhibited no pain behaviors on testing. Dr. Garrels testified credibly that he would have recorded an incident where the claimant cried or exhibited pain during his examination. Based upon this examination, Dr. Garrels found the claimant to have no active pain complaints, and no issues with range of motion. Accordingly, Dr. Garrels opined that the claimant suffered no permanent impairment as a result of his November 29, 2021, work injury. During a July 19, 2022 visit, Dr. Hoffman found the claimant to have normal range of motion in both of his shoulders.

The claimant points to the examination of Dr. Bansal in September of 2022, and urges the undersigned to adopt the permanent impairment rating(s) provided therein. Dr. Bansal performed range of motion testing on the claimant and provided certain measurements in his report. It is unclear the method used by Dr. Bansal in arriving at his range of motion measurements. Dr. Bansal also relied on faulty history in arriving at some of his conclusions. The claimant also relies on his own testimony to bolster the opinions of Dr. Bansal. As I ruled previously, I found the claimant to be a less than credible witness who appeared to be acting in his own self-interest in contradicting the objective medical records and testimony of Dr. Garrels.

The claimant argues that Dr. Garrels' opinions should be questioned and that Dr. Garrels was not a treating physician of the claimant. I disagree. Dr. Garrels examined the claimant on several occasions. He provided a referral to an orthopedic surgeon, Dr. Hoffman. While Dr. Garrels did not perform surgery on the claimant, he is board certified in occupational medicine. Dr. Garrels was a treating physician in this case. Dr. Garrels opined that the claimant had no permanent impairment based upon his examination and the application of the AMA Guides. He found that the claimant had no issues with range of motion or strength. Dr. Hoffman, the treating surgeon in this case, indicated that the claimant had no pain or issues with range of motion during his final visit in the record. He also allowed the claimant to return to work full-duty with no restrictions. Based upon the foregoing, I find the opinions of Dr. Garrels and Dr. Hoffman to be more credible. I

conclude that the claimant has not met his burden of proving by a preponderance of the evidence that he sustained a permanent disability to his left shoulder.

With regard to the left biceps tendinopathy, it was noted in therapy with Ms. Whiteside that the claimant indicated pain in the area of the left long head of the biceps tendon. I have previously noted that the long head of the biceps tendon originates in the shoulder, and therefore, a repair to the same is proximal and intertwined with the glenohumeral joint. See Ruff v. Senior Housing Health Care, Inc., File No. 1655383.01 (Arb. Oct. 19, 2022). Therefore, I do not find Dr. Bansal's rating to the left upper extremity based upon biceps tendinopathy to be credible, and I find that the claimant has not proven, by a preponderance of the evidence that he sustained a permanent disability to his left upper extremity.

Reimbursement for IME pursuant to Iowa Code section 85.39

The claimant seeks reimbursement for the IME and subsequent report of Dr. Bansal in the amount of one thousand nine hundred eighty and 00/100 dollars ($1,980.00). The defendant makes no argument in their post-hearing brief as to this issue; however, it is still the claimant's burden to prove entitlement thereto.

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.
> . . .
> 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 section 85.39(2).

The defendant is 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). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

In this case, Dr. Garrels opined in July of 2022, that the claimant had no impairment to his left shoulder. Dr. Bansal's report covers both the left and right shoulders. While I previously found the right shoulder injury to not be compensable, it would seem counter to the intent of the workers' compensation system to deny the claimant reimbursement for the cost of the report simply based upon this issue alone. I also am unaware of any binding precedent that provides guidance as to apportionment of the fee for an IME in a case such as this. Based upon my experience, Dr. Bansal's fee is reasonable for an IME in this case. Accordingly, I find that the defendant shall reimburse the claimant one thousand nine hundred eighty and 00/100 dollars ($1,980.00) for the IME of Dr. Bansal.

Costs

Claimant seeks the award of costs. Specifically, it appears that the claimant hand-wrote on the hearing report "103" and "filing fee." Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 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.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational

experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. Dec., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. Dec., September 27, 2019).

In my discretion I decline to award the claimant costs.

Constitutionality

Finally, I would note that the claimant made an argument in their post-hearing brief as to the constitutionality of certain changes made to the workers' compensation statutes in 2017. While this issue is not raised in the hearing report or the original notice and petition, I feel compelled to address it in this decision.

The claimant contends that "treating a shoulder not as a body as a whole is a violation of Fourth and Fifteenth Amendment of [*sic*] due process of the Constitution and equal protection."

The Iowa Supreme Court has previously ruled that agencies cannot decide issues of statutory validity or the constitutional validity of a statute. Salsbury Laboratories v. Iowa Dept. of Environmental Quality, 276 N.W.2d 830, 836 (Iowa 1979). Based upon this precedent, this agency cannot rule on the claim that certain provisions of Iowa law are unconstitutional and/or legally invalid.

ORDER

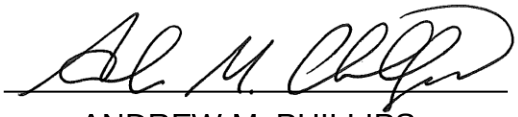
THEREFORE, IT IS ORDERED:

That the defendant shall reimburse the claimant one thousand nine hundred eighty and 00/100 dollars ($1,980.00) for the IME of Dr. Bansal.

That the claimant shall take nothing further.

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this __16th__ day of August, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James P. Hoffman (via WCES)

Benjamin J. Patterson (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, 10A) 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.