

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY MICHELLE LOVELL,

Claimant,

vs.

HENNIGES AUTOMOTIVE,

Employer,

and

TRAVELERS INSURANCE CO. OF CT.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File Nos. 5060143, 5060144

A R B I T R A T I O N

D E C I S I O N

Head Note Nos.: 1402.30, 1402.40,
1803, 1803.01, 2206, 2209

STATEMENT OF THE CASE

Amy Lovell, claimant, filed two petitions for arbitration against Henniges Automotive (hereinafter "Henniges"), as the employer and Travelers Insurance Company of Connecticut as the insurance carrier. In File No. 5060144, claimant also filed a claim against the Second Injury Fund of Iowa. This case came before the undersigned for an arbitration hearing on October 2, 2019.

The parties filed a hearing report in each file at the commencement of the hearing. On those hearing reports, 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 testified on her own behalf and called no other witnesses. Defendants called Shelly Currin to testify. The parties offered Joint Exhibits 1 through 20. Claimant did not offer a separate set of exhibits. The employer and insurance carrier offered Exhibits A through D. The Second Injury Fund of Iowa offered exhibits AA through JJ. All offered exhibits were received without objection.

Counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on November 8, 2019. The case was deemed fully submitted to the undersigned on that date.

ISSUES

In File No. 5060143, the parties submitted the following disputed issues for resolution:

1. Whether the September 28, 2015 work injury caused a permanent injury limited to a scheduled member injury, or whether the injury extends beyond the scheduled member and should be compensated as an industrial disability.
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. The applicable commencement date for permanent partial disability benefits.

In File No. 5060144, the parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury to her left arm arising out of and in the course of her employment on November 13, 2015.
2. Whether the alleged injury resulted in permanent disability and, if so, whether the injury caused an injury limited to a scheduled member injury, or whether the injury extends beyond the scheduled member and should be compensated as an industrial disability.
3. The extent of claimant's entitlement to permanent partial disability benefits, if any.
4. The applicable commencement date for permanent partial disability benefits, if any are awarded.
5. Whether claimant gave timely notice of the alleged November 13, 2015 work injury.
6. Whether claimant has established a qualifying first injury to the right upper extremity on September 23, 2015 for purposes of her Second Injury Fund claim.
7. Whether claimant has established a qualifying second injury to the left upper extremity on November 13, 2015 for purposes of her Second Injury Fund claim.

8. The extent of claimant's entitlement to Second Injury Fund benefits, if any.
9. The Second Injury Fund's entitlement to a credit for benefits payable by the employer, if Second Injury Fund benefits are awarded.
10. The proper commencement date for Second Injury Fund benefits.

FINDINGS OF FACT

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

Amy Lovell has worked three different stints for Henniges. Most recently, claimant started working for Henniges in 2010. Ms. Lovell asserts that she sustained a work related right arm injury on September 28, 2015. At that time, she was working in the finish area at Henniges. She ran a hot press and trimmed molds and parts. She testified that she processed 37 parts per hour on each of two machines. She testified that the job required extensive use of her arms and that she was constantly moving in this job. She further testified that she was working 12-hour shifts in September 2015. (Claimant's testimony)

Claimant testified that she had no prior difficulties, symptoms, or injuries to her right hand or arm. However, on September 28, 2015, Ms. Lovell felt a pop in her right hand while filing a part at Henniges. She reported this incident to her employer and Henniges sent her for medical evaluation in Fort Madison. (Claimant's testimony)

Medical records in evidence demonstrate that Ms. Lovell presented to the Fort Madison Community Hospital Occupational Health Clinic on September 30, 2015. Mary C. Bentler, PA-C, evaluated Ms. Lovell. Ms. Bentler diagnosed a strain of claimant's right hand and returned her to work with restrictions that limited repetitive motion with the right hand and wrist. Ms. Bentler also recommended against extensive gripping or use of scissors or filing of parts. (Joint Exhibit 1, pages 1-2)

Ms. Lovell returned for follow-up on October 21, 2015. Unfortunately, her symptoms persisted in the right hand. Claimant reported that she was not using her right hand at work and was only using her left hand to perform job duties. Physician Assistant Bentler recommended the use of a splint and offered meloxicam because ibuprofen was bothering claimant's stomach. (Joint Ex. 1, pp. 3-4)

Claimant testified that after receiving the splint and work restrictions, she transferred to a different job at Henniges. She testified that she tried to use her left hand more than her right to perform her job duties after she developed the right wrist symptoms. However, she then developed symptoms and problems in her left hand and wrist in November 2015. Ms. Lovell testified in her deposition that she was using her left hand to compensate for her right hand injuries when she developed left hand and wrist symptoms. (Joint Ex. 18, p. 27)

Specifically, Ms. Lovell described a large knot on the top of her left hand. Ms. Lovell described significant swelling in her left hand after the development of the knot on her left hand in November 2015. She testified that she reported these left hand problems to her employer on November 13, 2015. She also testified that the employer authorized medical care, including a subsequent orthopaedic referral. (Claimant's testimony)

Medical records document that Ms. Lovell returned to the Fort Madison Community Hospital Occupational Medicine Clinic on November 13, 2015. This time, Ms. Lovell sought evaluation of pain and swelling in the left wrist. Ms. Bentler noted the ongoing treatment of the right wrist and noted the new left wrist symptoms first appeared on November 10, 2015. Ms. Bentler diagnosed claimant with a ganglion cyst in the left wrist and recommended return to work for office work only and limited to eight hours per day. She referred claimant for orthopaedic evaluation. (Joint Ex. 1, pp. 5-6)

Ted N. Smith, PA-C evaluated Ms. Lovell in the orthopaedic clinic at Fort Madison Physicians and Surgeons on November 19, 2015. He documented symptoms and evaluation of both hands and wrists with reports of pain radiating from the hands to the elbows. (Joint Ex. 2, p. 1) Mr. Smith documented a positive Tinel's test, positive Phalen's and Finkelstein's, as well as snuffbox tenderness during his evaluation of claimant's right hand. (Joint Ex. 2, p. 3) Mr. Smith also documented positive Tinel's and Phalen's testing in the left wrist. (Joint Ex. 2, p. 4) Mr. Smith diagnosed claimant with De Quervain's syndrome in the right wrist, bilateral carpal tunnel syndrome, and a ganglion cyst in the left wrist.

Mr. Smith ordered an EMG of both upper extremities. On re-evaluating claimant after the EMG, Mr. Smith noted claimant's symptoms and conditions were unchanged. As a result of his December 7, 2015 evaluation, Mr. Smith diagnosed a ganglion cyst in the left wrist and bilateral medial epicondylitis of the elbows. He recommended surgical excision of the left ganglion cyst. (Joint Ex. 2, pp. 7-8) On December 23, 2015, orthopaedic surgeon, Brent Woodbury, M.D., took claimant to surgery and performed the excision of the ganglion cyst in claimant's left wrist. (Joint Ex. 2, p. 17)

Claimant's symptoms persisted. Dr. Woodbury re-evaluated claimant on January 28, 2016. He noted that claimant had failed conservative treatment efforts and recommended surgery for claimant's right wrist De Quervain's syndrome. (Joint Ex. 2, p. 30) Surgery occurred on February 10, 2016. (Joint Ex. 2, p. 29)

Unfortunately, claimant ruptured the surgical repair and needed a second surgery for the De Quervain's in April 2016. Ms. Lovell testified that they performed a nerve block before the second surgery on her right arm. Unfortunately, the nerve block was not successful. Ms. Lovell testified that her right arm never woke up after the second surgery. She testified that she does not have sensation from her armpit to her right hand other than the feeling of needles poking her arm. (Claimant's testimony)

Claimant was referred to a neurologist in Des Moines. (Joint Ex. 3) Another neurologist in Missouri subsequently evaluated her. (Joint Ex. 12) Unfortunately, it appears that claimant sustained nerve damage during the nerve block. She was referred to a pain specialist to help manage her ongoing symptoms.

On January 12, 2017, Sanjay Sundar, M.D. evaluated claimant at the Great River Pain Center. Dr. Sundar identified no signs of CRPS, but diagnosed a C8 nerve injury. He recommended a spinal cord stimulator trial, which he ultimately performed and deemed successful. Dr. Sundar recommended permanent implantation of a spinal cord stimulator and referred claimant to a neurosurgeon, Chandan G. Reddy, M.D. at the University of Iowa Hospitals and Clinics. (Joint Ex. 4)

Dr. Reddy concurred that permanent spinal cord stimulator placement was appropriate. He took claimant to surgery on April 28, 2017 and implanted a permanent spinal cord stimulator. The lead entry was at the T11-12 level and the leads were attached at the C3-4 level. (Joint Ex. 5, p. 3)

Unfortunately, Ms. Lovell's spinal cord stimulator leads migrated and disrupted the effectiveness of the stimulator. Dr. Reddy performed a revision surgery to replace the leads on June 14, 2017. (Joint Ex. 5, p. 6) The spinal cord stimulator masked claimant's symptoms and she continued to work. However, she continued to have symptoms in the right shoulder and right arm.

Referral to an orthopaedic surgeon, Craig A. Bottke, M.D. was made. Dr. Bottke recommended carpal tunnel surgery on claimant's right wrist. Dr. Bottke took claimant to surgery and performed the right carpal tunnel release and a right dorsal wrist exostosis on October 16, 2017. (Joint Ex. 9, p. 5) Dr. Bottke subsequently recommended and performed a left carpal tunnel release on November 13, 2017. (Joint Ex. 9, p. 9)

Dr. Bottke opined that the bilateral carpal tunnel syndromes were causally related to claimant's work activities at Henniges. Dr. Bottke also opined that the right wrist exostosis was aggravated by claimant's work activities. However, after an appropriate recovery time, Dr. Bottke opined that claimant could return to work without restrictions as a result of the bilateral carpal tunnel releases. (Joint Ex. 10, p. 1) Dr. Bottke declared maximum medical improvement for both wrists on May 8, 2018. He assigned no permanent work restrictions and no permanent impairment for the bilateral carpal tunnel syndrome or right dorsal wrist exostosis. (Joint Ex. 9, p. 14)

Dr. Bottke provided a hand-written responsive report in April 2019. In that report, he noted that claimant likely has permanent impairment. However, he noted that impairment was "not with regards to what I saw her for." Instead, he opined claimant's bilateral carpal tunnel syndrome and right wrist exostosis "resolved without ratable impairment." (Joint Ex. 11, p. 1)

On September 25, 2018, another pain specialist, John B. Dooley, M.D., evaluated claimant. He diagnosed claimant with complex regional pain syndrome of the right upper extremity, though his medical records are confusing whether he diagnoses her with type 1 or type 2 CRPS. (Joint Ex. 7) Dr. Dooley concluded that Ms. Lovell needed a second revision surgery for lead migration of her spinal cord stimulator. On October 15, 2018, Dr. Dooley performed the second revision surgery. (Joint Ex. 7, pp. 8-10)

In his October 23, 2018 office note, Dr. Dooley indicates that the spinal cord stimulator was providing good coverage of claimant's symptoms. However, he also noted that her symptoms were exacerbated by use of the right upper extremity. (Joint Ex. 7, pp. 14-15) By February 2019, claimant was again reporting difficulties with her spinal cord stimulator and reporting that it did not provide adequate coverage. She reported increasing right arm symptoms. (Joint Ex. 7, p. 25) Dr. Dooley continued to label claimant's condition as CRPS in February 2019. (Joint Ex. 7, p. 25) Nevertheless, on March 4, 2019, Dr. Dooley's office released claimant to return to work without restrictions. (Joint Ex. 7, p. 30)

Ms. Lovell obtained an independent medical evaluation performed by John D. Kuhnlein, D.O. on July 24, 2018. Dr. Kuhnlein diagnosed claimant with right de Quervain's tenosynovitis and declared it to be related to claimant's work activities. He opined that claimant had bilateral carpal tunnel syndrome with surgical release, which was also causally related to claimant's work activities. Dr. Kuhnlein diagnosed claimant with a right bony exostosis of the right middle metacarpal, noted the surgical excision and opined that work activities lit up this condition. (Joint Ex. 13, pp. 13-14)

Dr. Kuhnlein further diagnosed claimant with a left wrist ganglion cyst. Again, he opined that this was lit up by work activities. Finally, Dr. Kuhnlein opined that claimant sustained a radial neuritis due to the de Quervain's and opined that this was also related to claimant's work activities. (Joint Ex. 13, pp. 13-15)

Dr. Kuhnlein opined that claimant achieved maximum medical improvement for the de Quervain's, bilateral carpal tunnel syndromes and the left ganglion cyst. However, he opined that claimant was not at maximum medical improvement as a result of his brachial plexopathy. (Joint Ex. 13, p. 16) Dr. Kuhnlein provided impairment ratings for claimant's various conditions.

With respect to claimant's right carpal tunnel syndrome, Dr. Kuhnlein assigned no permanent impairment. Similarly, with respect to the left carpal tunnel syndrome, Dr. Kuhnlein assigned no permanent impairment. He assigned 19 percent of the right arm due to brachial plexopathy and an additional 1 percent of the right arm for the underlying de Quervain's that caused the brachial plexopathy. Dr. Kuhnlein opined that claimant sustained an additional 3 percent of the right arm due to the bony exostosis. With respect to the spinal cord stimulator, Dr. Kuhnlein opined that claimant sustained 3 percent permanent impairment of the whole person as a result of the surgical implantation of the spinal cord stimulator. (Joint Ex. 13, pp. 16-17)

Dr. Kuhnlein re-evaluated claimant on July 17, 2019. He authored a second report after this evaluation. (Joint Ex. 14) Dr. Kuhnlein added a diagnosis of CRPS at the time of his second evaluation. He opined that claimant had achieved maximum medical improvement for both the CRPS and the brachial plexopathy by April 19, 2019. (Joint Ex. 14, p. 9)

Dr. Kuhnlein again addressed permanent impairment. He reiterated that claimant sustained no permanent impairment as a result of the bilateral carpal tunnel conditions. He confirmed the 3 percent permanent impairment of the right upper extremity due to the bony exostosis in claimant's right wrist due to reduced range of motion. Dr. Kuhnlein confirmed his prior 19 percent right upper extremity rating brachial plexopathy and added an additional 1 percent of the upper extremity for residual pain from the de Quervain's tenosynovitis. Dr. Kuhnlein combined these ratings to 22 percent of the right upper extremity, or 13 percent of the whole person.

With respect to the lumbar spine, Dr. Kuhnlein awarded 3 percent of the whole person. He also included a 3 percent whole person impairment to the thoracic spine. Both of these ratings were assigned due to the surgical implantation of the spinal cord stimulator. Dr. Kuhnlein found no permanent impairment for the left arm. (Joint Ex. 14, p. 10)

Dr. Kuhnlein also opined that claimant requires permanent work restrictions as a result of his injuries. Specifically, Dr. Kuhnlein recommended limiting lifting to 20 pounds on an occasional basis from floor to waist and waist to shoulder. He recommended against any work at or above shoulder height. (Joint Ex. 14, p. 10)

Dr. Kuhnlein recommended claimant be permitted to sit, stand, or walk as needed for comfort. He recommended claimant only occasionally stoop, squat, bend, or kneel. He recommended crawling only on a rare basis and recommended against any use of ladders or work at heights. He recommended occasional gripping and grasping. (Joint Ex. 14, p. 10)

Defendants sought their own independent medical evaluation, performed by Jeffrey A. Westpheling, M.D. on July 25, 2019. (Joint Ex. 15) Dr. Westpheling concurred that claimant's right and left carpal tunnel syndrome was related to her employment activities. He similarly concurred with Dr. Kuhnlein that these conditions caused no permanent impairment.

Dr. Westpheling concurred with the left ganglion cyst diagnosis. However, he opined that the ganglion cyst was not related to claimant's employment activities. Instead, Dr. Westpheling opined that ganglion cysts are degenerative in nature "and would not be expected to result from her work activities over a short period of time." (Joint Ex. 15, p. 2)

Dr. Westpheling also concurred with the diagnosis and causal connection of the right de Quervain's syndrome. He did not, however, agree that the right dorsal

exostosis was causally related. Instead, he opined that the exostosis was of “unknown etiology” and that there was “no medical reason to expect that this would be exacerbated by repetitive motion given that the bony prominence is not mobile and is not affected by repetitive activity.” (Joint Ex. 15, p. 2)

Interestingly, Dr. Westpheling also concurred with the permanent impairment ratings offered by Dr. Kuhnlein. Dr. Westpheling noted, “Dr. Kuhnlein appears to have based his rating on objective medical evidence.” (Joint Ex. 15, p. 2) However, Dr. Westpheling opines that claimant did not sustain a body as a whole injury related to the spinal cord stimulator because that was intended solely to treat symptoms in the right arm. (Joint Ex. 15, p. 2)

Ms. Lovell described her current symptoms. She testified that her right arm hurts constantly even with the spinal cord stimulator. She testified that the battery pack pulls in her back when she bends. She also feels a pulling sensation in her shoulder blades when she lifts her arms. She tries to avoid turning her head or lifting her arms because of the symptoms and prior lead migration problems she has experienced. (Claimant’s testimony)

Ms. Lovell quantified her symptoms as a 5 on a 10-point pain scale on the top of her left hand. She testified that she uses ibuprofen 3 times per day and Tylenol twice a day. In total, Ms. Lovell testified she received 2 surgeries on her left hand and 4 surgeries as a result of her right hand and wrist injuries.

In spite of her various injuries, surgeries, and ongoing symptoms, Ms. Lovell continues to work full-duty without permanent work restrictions in her position with Henniges. She testified that her supervisor is aware of conditions and symptoms. She testified that her boss and co-workers will assist her. Ms. Lovell testified that she continues to work because she needs to support her family. However, she is not sure whether she will be able to continue to perform her job on a full-time basis because she experienced pain every day.

Ms. Lovell also testified that she no longer works overtime hours. She could work up to 60 hours per week at the time of trial, but she does not accept the voluntary overtime because of her conditions and symptoms. She did concede that her hourly rate is now above that which she earned at the time of either alleged injury. (Claimant’s testimony) She also conceded that she has received all expected raises since her date of injury and that she has not applied for other jobs or received complaints about her job performance since the injuries. (Joint Ex. 18, p. 48)

Defendants called Shelly Currin, the human resources director for Henniges, to testify. Ms. Currin testified that claimant is currently working without medical restrictions and that she has not made a formal request for accommodations. Ms. Currin also testified that claimant has the most seniority in her department and there are other jobs within her department that could be available to her, if she desired or needed them. (Shelly Currin testimony)

Ms. Currin also testified that Henniges offers accommodations when needed. Claimant is able to bid to new jobs that would also accommodate or correspond with her physical limitations, if any. Ms. Currin confirmed that claimant currently earns \$18.03 per hour, more than at the time of the alleged injuries. She confirmed that claimant is a good worker. Ms. Currin testified that as the human resources director she would take more employees like claimant because Ms. Lovell shows up to work every day she is scheduled. (Shelly Currin testimony)

Claimant is a right-hand dominant woman. She is 39 years old. She has a 10th grade education with a GED. She testified she was a "B" and "C" student in high school. She has no post-secondary education. (Claimant's testimony)

Ms. Lovell testified she has no chronic health problems. She has no learning disabilities and possesses a valid driver's license. She owns a computer and is able to use it. She owns a "smart" phone and is able to text on her phone. (Claimant's testimony)

Most of her employment history is in various positions with Henniges. However, claimant has also worked in other manufacturing positions, at Wal-Mart doing grocery stocking and customer assistance, and in shipping positions. She has no specific occupational training or advanced skills. (Claimant's testimony)

As I consider the medical evidence, I find that Ms. Lovell has proven she sustained work-related injuries to both her left and right arm. One of the fighting issues between claimant and the Second Injury Fund is whether the left arm injuries are a sequela of the initial right arm injuries or a separate and discrete injury and disability on a second date of injury. I find that the left arm injuries result from the right arm injuries. However, I also find that claimant failed to prove any permanent disability resulted from the left arm injuries. Dr. Bottke, Dr. Kuhnlein and Dr. Westpheling all opine that claimant sustained no permanent impairment as a result of the left arm injuries and surgeries.

Therefore, I find that the left carpal tunnel syndrome was causally related to claimant's work activities at Henniges. I find that the claimant's work activities at Henniges materially aggravated or lit up the ganglion cyst in claimant's left wrist. I find that the work activities caused claimant's surgery and medical care for the left arm. However, I find that claimant failed to prove permanent impairment or permanent disability to the left hand, wrist, or arm.

With respect to claimant's right arm, I find that claimant proved her work activities caused her right carpal tunnel syndrome. I find Dr. Kuhnlein's opinion most convincing in the record and find that claimant proved her work activities lit up or exacerbated the right dorsal exostosis, requiring medical care and surgical excision. I accept Dr. Kuhnlein's impairment rating of three percent of the right upper extremity for the exostosis.

I also accept Dr. Kuhnlein's diagnosis of brachial plexopathy resulting from the de Quervain's, which was directly related to claimant's work activities. I similarly accept Dr. Kuhnlein's impairment rating related to the de Quervain's and brachial plexopathy. Perhaps more importantly, I accept Dr. Kuhnlein and Dr. Dooley's diagnosis of complex regional pain syndrome (CRPS) resulting from claimant's brachial plexopathy.

Perhaps the most difficult and most controversial opinion would be with respect to the impairment ratings offered by Dr. Kuhnlein for the thoracic and cervical regions due to the implantation of the spinal cord stimulator. The spinal cord stimulator clearly was to provide symptomatic relief, or masking, of right arm symptoms. Nothing about the right arm injuries caused injuries to claimant's neck or thoracic spine.

Nevertheless, the surgical interventions to place the spinal cord stimulator cause objective structural changes in claimant's spine. The initial operative report describes the leads entering through the T11-12 space and connecting eight leads to claimant's cervical spine. The leads were anchored to the surrounding fascia and a shunt was created to allow the leads to pass safely to the battery pack located in claimant's lower back. (Joint Ex. 5, p. 3)

The initial revision surgery notes again described the anchoring process to secure the cervical leads placed in claimant's spine. (Joint Ex. 5, p. 6) Dr. Dooley's operative note of October 15, 2018, again describes the implantation of the stimulator leads and the anchoring process as well as the tunneling necessary to connect the leads to the battery pack. (Joint Ex. 7, p. 9)

There are obvious surgical scars, anchors, a battery pouch, a shunt to safely get the leads to the battery pack in claimant's lower back, as well as other structural changes made to claimant's spine and back as a result of the installation and subsequent revisions of the spinal cord stimulator. Although I recognize that the purpose of the stimulator was to mask or reduce pain signals and symptoms in the right arm, I find that the installation of the stimulator caused an objective anatomical change in claimant's spine and soft tissues of her back.

Defendants challenge the applicability of the AMA Guides' impairment ratings under the circumstances. However, Dr. Westpheling accepted Dr. Kuhnlein's impairment rating as based upon objective medical evidence. Therefore, I find Dr. Kuhnlein's impairment ratings convincing and accept Dr. Kuhnlein's impairment ratings. I find that claimant has proven permanent impairment of both the thoracic and lumbar spine resulting from the brachial plexopathy and CRPS in her right arm. I find that the anatomical location of the injury, due to necessary medical treatment through the installation of a spinal cord stimulator, extends beyond the right arm.

Dr. Kuhnlein and Dr. Westpheling both evaluated claimant near the time of trial. Both concur that medical restrictions are indicated. I find Dr. Kuhnlein's permanent restrictions to be reasonable and necessary. Claimant testified that she can continue to perform her job duties at Henniges within the 20-pound occasional lifting restriction

offered by Dr. Kuhnlein. Therefore, given claimant's ongoing performance of work duties, I find that to be a reasonable medical restriction.

Ms. Lovell is a motivated worker. She is to be commended for her efforts to continue working in spite of her injuries. The employer, likewise, should be commended for its willingness to keep Ms. Lovell as an employee and for its understanding of her difficulties as she proceeded throughout this worker's compensation claim. Ultimately, I am pleased to find that Ms. Lovell remains capable of performing her work duties with Henniges.

Ms. Lovell has not sought alternate employment. She is not likely to pursue other employment opportunities in the foreseeable future. However, if she does, she will have to be cautious as to the types of employment she pursues. She does not have training to permit skilled employment. She will carry permanent work restrictions from Dr. Kuhnlein given her injuries. Other employment is not impossible, but claimant will be limited in her options if she ever elects or is forced to seek alternate employment.

Having found claimant sustained CRPS and anatomical changes outside the right arm, I must also determine her loss of earning capacity. Considering claimant's age, the situs and severity of her injuries, the permanent impairment ratings, permanent medical restrictions, claimant's ability to continue working for the employer in her full-time position, her loss of overtime hours, her educational and employment background, as well as her motivation to continue working, along with all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Ms. Lovell proved she sustained a thirty-five percent (35%) loss of future earning capacity as a result of the September 28, 2015 right arm injury and sequela of that injury.

I find that Ms. Lovell did not prove a separate work injury occurring on November 13, 2015 to the left arm. Instead, this injury was the result and sequela of the right arm injury. Regardless, even if a reviewing authority were to determine that these were separate and distinct injuries, I find that the left arm condition and injuries did not result in any permanent impairment or permanent disability.

There was some debate about whether claimant gave timely notice of her left arm injury. The notice defense was argued in the employer's post-hearing brief. However, the employer conceded the notice issue in Responses to Requests for Admissions. The notice issue was really raised by the Second Injury Fund. Realistically, the Second Injury Fund will not have liability in these cases and this issue is not likely a necessary factual issue.

However, to the extent that a reviewing authority deems factual findings necessary on this issue, I accept claimant's testimony that she gave notice of her left hand and wrist condition on November 13, 2015. Such notice would be within 90 days of the initial injury date of September 28, 2015. I also find that the left wrist condition did not arise as a sequela until November 10, 2015 and notice could not have been given of that condition prior to that date.

Finally, there is debate between the parties about the proper commencement date for permanent disability benefits. Defendants contend that claimant was not able to and did not return to her pre-injury job prior to the date of maximum medical improvement on April 19, 2019. Indeed, both Dr. Kuhnlein and Dr. Westpheling concur that maximum medical improvement occurred for the brachial plexopathy by April 19, 2019. (Joint Ex. 14, p. 9; Joint Ex. 15, p. 2) All other medical conditions and injuries achieved maximum medical improvement prior to April 19, 2019.

Claimant contends that the last temporary disability benefit was paid to claimant on November 6, 2017. Claimant was not capable of returning to substantially similar employment on or before November 6, 2017. The record in this case demonstrates payment of temporary disability, or healing period, to claimant through November 6, 2017. (Second Injury Fund Ex. FF, p. 18) No additional healing period benefits were claimed. (Hearing Report) Therefore, I find that claimant's healing period benefits terminated on November 6, 2017.

CONCLUSIONS OF LAW

The initial disputed issue is for File No. 5060143. This claim involves an alleged right arm injury on September 28, 2015. (Hearing Report) Defendants admit the alleged injury and that it caused permanent disability. However, there is dispute between the parties about whether the injury is limited to the right arm or extends beyond the scheduled member.

Ms. Lovell contends that her right arm injury results in CRPS and affects her spine due to the surgical placement of a spinal cord stimulator. Ms. Lovell contends that the injury extends beyond the scheduled right arm and should be compensated industrially. The employer and insurance carrier contend that all functional impairment is confined to the right arm and that the spinal cord stimulator is solely for purposes of controlling symptoms in the right arm. As such, the defendants contend that the injury is limited to the right arm and should be compensated as a scheduled member injury.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) (2015) or for a loss of earning capacity under section 85.34(2)(u) (2015). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). On the other hand, an injury that extends beyond the schedule entitles the claimant to industrial disability benefits to compensate her for her future loss of earning capacity. Iowa Code section 85.34(2)(u).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the

permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In this case, I found that the September 28, 2015 injury involves not only the right arm but also resulted in CRPS and anatomic changes in claimant's thoracic, cervical and lumbar spine areas. Among other things, I found that the placement of stimulator leads involved an anatomic change in the thoracic spine where the leads were inserted as well as in the cervical spine where they were anchored. In addition, the spinal cord stimulator required construction of a shunt to permit connection of the leads to the battery pack. The placement of the battery pack required construction of a pouch that would not otherwise be present in claimant's low back. Therefore, I found that the surgical placement of the spinal cord stimulator was for purposes of treating or masking the right arm symptoms but involved anatomical changes and loss of function outside the right arm. As such, I conclude this injury extends beyond the right arm and should be compensated with industrial disability pursuant to Iowa Code section 85.34(2)(u) (2015).

In addition, claimant argues that the injury resulted in CRPS. As claimant accurately points out, both the Iowa Supreme Court and the Iowa Workers' Compensation Commissioner have recognized that CRPS involves an injury to the sympathetic nervous system and is not limited to a scheduled member injury. See Collins v. Department of Human Services, 529 N.W.2d 627 (Iowa 1995); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961); Lupian v. Swift Co., File No. 5006609 (Appeal April 2006); Luetger v. Menards, File No. 5045116 (Appeal January 2016). Having found that claimant proved a diagnosis of CRPS, I conclude that claimant has established entitlement to industrial disability benefits for an unscheduled injury. Iowa Code section 85.34(2)(u).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having found that claimant proved permanent impairment and that she requires permanent restrictions outlined by Dr. Kuhnlein, I also considered claimant's age, the situs and severity of her injuries, her motivation, educational background, employment history, her ability to return to work, as well as all other factors of industrial disability outlined by the Iowa Supreme Court. Having considered all of the relevant factors of industrial disability, I found that Ms. Lovell proved a 35 percent loss of future earning capacity as a result of her September 28, 2015 injury. Accordingly, I conclude that Ms. Lovell is entitled to a 35 percent industrial disability award, or 175 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u) (2015).

The parties also dispute the proper commencement date for permanent disability benefits. As noted previously, compensation for permanent partial disability benefits begins at the termination of the healing period. Iowa Code section 85.34(1); Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016).

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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In this case, defendants paid healing period benefits through November 6, 2017. No additional healing period benefits were requested by claimant. Therefore, I conclude that claimant's healing period terminated on November 6, 2017.

Having found that claimant did not achieve maximum medical improvement until after November 6, 2017 and having found that claimant was not capable of returning to substantially similar employment prior to November 6, 2017, I conclude that the proper conversion date from healing period to permanent partial disability benefits is November 7, 2017. Iowa Code section 85.34(1); Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016).

Ms. Lovell also asserts a claim for a separate, left arm injury arising out of and in the course of her employment with Henniges on November 13, 2015. Defendants denied that such an injury arose out of and in the course of claimant's 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.

With respect to the alleged injury of November 13, 2015, I found that claimant proved her left carpal tunnel and left ganglion cyst were causally related to her work activities at Henniges or materially aggravated and lit up by those work activities. Accordingly, I conclude that claimant proved the left hand and arm injuries arose out of and in the course of her employment with Henniges.

However, I also found that the left hand, wrist, and arm injuries sustained by claimant were a sequela of the September 28, 2015 right arm injury. As such, I conclude the left arm injury is compensable under File No. 5060143 and not under File No. 5060144. However, to the extent that the left arm injury would be considered a separate and discrete disability and/or injury, I found that claimant failed to prove she sustained permanent impairment or permanent disability as a result of the left hand, wrist, and arm injury.

For clarification, I considered the left arm as part of the September 28, 2015 work injury. However, given that I found no permanent restrictions were required for the left arm and that claimant failed to prove permanent disability or impairment for the left arm, the left arm sequela injury had no practical effect on the permanent disability award in File No. 5060143.

I conclude that claimant has not proven a separate and discrete injury or disability to the left arm on November 13, 2015. I conclude that claimant should take nothing against the employer and insurance carrier in File No. 5060144.

Ms. Lovell also filed a Second Injury Fund claim in File No. 5060144. Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury

Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

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

In File No. 5060144, I concluded that claimant did not prove a compensable separate and discrete injury to the left arm occurred on November 13, 2015. Instead, I found that the left arm was a sequela of the September 28, 2015 work injury. As such, claimant has not established a qualifying second injury upon which Second Injury Fund benefits can be awarded.

Moreover, I found that claimant failed to prove any functional impairment or permanent disability resulting from the left arm injury. Again, one necessary factor to establish a Second Injury Fund claim is a loss or loss of use of a second specified scheduled member. The Code requires that there be permanency disability for both an initial and a second injury. Iowa Code section 85.64. Claimant did not establish permanent disability for the left arm. Therefore, even if it were considered a separate and "second" injury, claimant failed to establish permanent disability resulting from the alleged November 13, 2015 left arm injury. I conclude that claimant failed to establish entitlement to an award of benefits from the Second Injury Fund.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5060143:

Defendants shall pay claimant one hundred seventy-five (175) weeks of permanent partial disability benefits commencing on November 7, 2017.

All weekly benefits shall be paid at the stipulated rate of four hundred eighty-five and 31/100 dollars (\$485.31) per week.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

In File No. 5060144:

Claimant takes nothing against the employer or the Second Injury Fund of Iowa.

Signed and filed this 13th day of February, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Patrick O'Connell (via WCES)
Nicholas Pothitakis (via WCES)
Sarah Timko (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.