

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ANDREA SMITH,

Claimant,

vs.

TYSON FRESH MEATS,

Employer,
Self-Insured,
Defendant.

FILED

JAN 24 2019

File Nos.: 5058038, 5058039,
5058040, 5058041, 5060271

ARBITRATION

DECISION

Head Note No.: 1100

STATEMENT OF THE CASE

Claimant, Andrea Smith, filed five petitions in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, self-insured employer, as defendant, as a result of alleged injuries sustained on April 23, 2016, April 26, 2016, May 13, 2016, May 19, 2016, and September 27, 2016. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch in Waterloo, Iowa. The record in this case consists of joint exhibits 1 through 14, claimant's exhibits 1 through 23, defendant's exhibits A through G, and the testimony of the claimant.

At the commencement of evidentiary hearing claimant moved to dismiss her petition in File No. 5058040 (Date of Injury: May 19, 2016). Claimant's motion was sustained. By post-hearing brief, claimant represented she was no longer pursuing April 23, 2016 as a cumulative date of injury; as such, claimant has waived consideration of the issues presented for determination in File No. 5060271 (Date of Injury: April 23, 2016). At the time of evidentiary hearing, claimant represented the dates of April 26, 2016 (File No. 5058038), May 13, 2016 (File No. 5058039), and September 27, 2016 (File No. 5058041), reflect alternate dates of injury for the same alleged cumulative injuries to claimant's neck, bilateral shoulders, and low back. Accordingly, only claims relative to alleged injuries to these body parts will be considered herein.

ISSUES

In File No. 5058038 (Date of Injury: April 26, 2016)

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on April 26, 2016 which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability;
3. Claimant's entitlement to temporary disability benefits from September 28, 2016 through August 21, 2017;
4. Whether the alleged injury is a cause of permanent disability;
5. Extent of claimant's industrial disability;
6. Commencement date for any permanent disability benefits; and
7. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

In File No. 5058039 (Date of Injury: May 13, 2016)

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on May 13, 2016 which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability;
3. Claimant's entitlement to temporary disability benefits from September 28, 2016 through August 21, 2017;
4. Whether the alleged injury is a cause of permanent disability;
5. Extent of claimant's industrial disability;
6. Commencement date for any permanent disability benefits; and
7. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

In File No. 5058041 (Date of Injury: September 27, 2016)

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on September 27, 2016 which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability;
3. Claimant's entitlement to temporary disability benefits from September 28, 2016 through August 21, 2017;
4. Whether the alleged injury is a cause of permanent disability;
5. Extent of claimant's industrial disability;
6. Commencement date for any permanent disability benefits; and
7. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

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

Claimant was 38 years of age at the time of hearing. She resides in Waterloo, Iowa. Claimant is single and the mother to six minor children; she also has legal guardianship of a nephew. Claimant is right-hand dominant. Claimant graduated high school in 1997. At the time of evidentiary hearing, claimant was a student at Hawkeye Community College, studying pre-nursing. Claimant's work history consists generally of telemarketer, sorter, machine operator, stay at home parent, and her employment with defendant. (Claimant's testimony)

Claimant applied for employment with defendant in July 2004 and underwent a pre-employment physical examination. (CE1, pp. 1-2; CE2, pp. 5-6) Over the course of her employment at defendant, claimant has held a number of job positions. Positions include: skinner, popping button bones, flashlight job, picking bones, liver cheese, dry ice, boxing rib tips, and janitor. (Claimant's testimony)

Claimant completed an injury report alleging she suffered a work-related injury on September 19, 2006. By the report, claimant reported right upper extremity pain she

related to working with the whizzard knife. (CE3, p. 7) At that time, claimant was working in the popping button bones job. (Claimant's testimony) Claimant and defendant entered into an agreement for settlement regarding claimant's September 19, 2006 injury. The documents were approved by this agency on August 3, 2010. Thereby, the parties stipulated claimant sustained an injury on September 19, 2006 and suffered a resultant 25 percent whole person impairment. (DEC, pp. 17-18) As support for the settlement, the parties attached an independent medical examination (IME) authored by Farid Manshadi, M.D. By this report, Dr. Manshadi opined claimant suffered permanent functional impairment and recommended permanent restrictions as a result of injuries to claimant's right shoulder, right hand, right fifth digit, and left fourth digit. (DEC, p. 26; see CE19)

Claimant completed an injury report alleging she suffered a work-related injury on August 13, 2009. By her report, claimant complained of bilateral upper extremity, back, and neck symptoms she related to performance of the liver cheese job. (CE4, p. 8)

Claimant completed an injury report alleging she suffered a work-related injury on December 16, 2010. By her report, claimant complained of left upper extremity and neck symptoms she related to wiping condensation duties. (CE5, p. 9; CE6, p. 10) Claimant was ultimately seen by Dr. Manshadi for another IME, on this occasion for neck, left shoulder, and low back pain. Dr. Manshadi opined claimant suffered a work-related injury to her neck and low back. He recommended further care, but in the event further care was not sought, he opined claimant suffered permanent impairment and recommended permanent restrictions. (CE20, p. 56) Claimant filed a petition in arbitration and following hearing, an arbitration decision was issued on July 28, 2014. The presiding deputy commissioner found claimant's testimony regarding the onset of her symptoms and treatment history was vague. She further found claimant was not a good historian and accordingly, awarded greater weight to claimant's contemporaneous medical records. (DED, p. 30) The deputy ultimately awarded the greatest weight to the opinions of Robert Gordon, M.D., who had treated claimant for over one year. (DED, pp. 37, 40) The deputy concluded claimant failed to prove she sustained injuries to her left shoulder, neck, or low back, arising out of and in the course of her employment with defendant. (DED, pp. 38, 40)

Claimant completed an injury report alleging she suffered a work-related injury on October 8, 2012. By her report, claimant complained of bilateral hand symptoms she related to pulling fat duties. (CE7, p. 11)

In June 2013, claimant presented to Vinko Bogdanic, M.D. with continued complaints of intermittent bilateral cervical radiculopathy, bilateral carpal tunnel syndrome, and lumbosacral radiculopathy. Conservative measures were recommended. (JE1, p. 1)

Claimant returned to Dr. Bogdanic in April 2014 with continued neck and back pain. He assessed intermittent bilateral lumbosacral sensory radiculopathy, discogenic pain, and neck pain, likely musculoskeletal. Claimant declined physical therapy. Dr.

Bogdanic referred claimant to a pain specialist. (JE1, p. 2) On May 9, 2014, claimant underwent cervical facet injections at right C4-C5, C5-C6, and C6-C7. (JE2, pp. 4-5) Claimant presented to Dr. Bogdanic on May 16, 2014 in follow up of back and neck complaints, as well as a new symptom of headaches. Studies of claimant's brain were ordered. (JE1, p. 3)

In September 2014, claimant presented to the emergency room with complaints of chronic low back pain. Claimant relayed she received a pain medication injection the prior evening, but her symptoms had returned that morning. A course of prednisone was prescribed. (JE4, pp. 13-14, 16)

Claimant began work in the dry ice job at defendant. Claimant testified she was required to shovel ice from an ice machine into a cart. She would then push the cart around the production floor and shovel ice into 25 combos, receptacles for meat. She would shovel 2 to 3 scoops of ice into each combo to keep the product cool. Generally, the combos are chest height, but one combo was a bit taller than claimant. Claimant testified she did not know how many rounds she made per day with her cart, but performed her duties in a continuous loop. While she was required to complete her duties, claimant testified she was allowed more freedom to work at her own pace and to stretch her body. (Claimant's testimony)

In October 2014, claimant presented to Convenient Care – Wheaton Franciscan (Convenient Care). The provider noted complaints of generalized myalgias of the neck, back, arms, and legs, which began within days of beginning the dry ice job. Medications were prescribed. (JE5, pp. 17, 19)

In January 2015, claimant returned to Convenient Care with complaints of lumbar spine pain. She was again treated with medication. (JE5, pp. 20, 22)

At the referral of Dr. Bogdanic, on April 2, 2015, claimant presented to pain management physician, Gayathry Inamdar, M.D. Claimant complained of neck, trapezius, low back, and leg pain. Dr. Inamdar ordered physical therapy and prescription medication. (JE6, pp. 31-32)

In May 2015, claimant presented to Convenient Care with back pain. She received a Toradol injection and prescription medication. (JE5, pp. 23-25)

On July 10, 2015, claimant presented to Robert Welshons, PAC, with complaints of neck and back pain. Claimant reported she performed a lot of lifting and shoveling of dry ice at work. Mr. Welshons advised claimant he would never be able to make the pain go away, and she would continue to experience problems as long as she remained in her current position. He prescribed medication and suggested physical therapy and chiropractic treatment. (JE3, p. 10)

In January 2016, claimant returned to Convenient Care and reported a flare of lumbar back pain with shoveling at work. Claimant again received a Toradol injection and prescription medication. (JE5, p. 26)

On April 23, 2016, claimant presented to Convenient Care and was examined by Kala Miller, ARNP. Claimant reported complaints of back pain, chronic for years, but recently worsened. She also noted right shoulder and neck pain. (JE5, p. 27) Ms. Miller assessed bilateral low back pain without sciatica and right-sided neck pain. She issued prescriptions for medication. (JE5, p. 29)

On April 26, 2016, claimant completed an injury report. Thereby, she reported traumatic injury to her left wrist on April 26, 2016 when an item struck her shovel. She also noted complaints of symptoms of her bilateral shoulder and neck regions, as well as low back pain with scooping duties. (CE8, pp. 12-13; CE9, pp. 14-18)

On April 27, 2016, claimant presented to the medical clinic at defendant. She reported pain of her bilateral hands, wrists, forearms, shoulders, neck, and back. Claimant reported her symptoms came on gradually, while working. She noted first noticing the symptoms on April 26, 2016. Claimant was placed on a light-duty work assignment. (JE7, pp. 37-38)

Claimant returned to the medical clinic on May 2, 2016. She reported left hand, wrist and forearm pain; right shoulder pain with scooping; general neck pain; and intermittent low back pain. She was again assigned to light duty. (JE7, pp. 40-41)

On May 6, 2016, claimant returned to the medical clinic. On this date, she reported right shoulder, neck, left wrist, and low back pain. Light duty was again offered. (JE7, pp. 43-44)

On May 12, 2016, claimant presented to the medical clinic with complaints of right shoulder, neck, left wrist, and low back pain. Light duty was offered. (JE7, pp. 46-47)

On May 13, 2016, claimant completed an injury report. Thereby, she alleged injury to her neck, shoulders, low back, and right hip, which she attributed to the repetitive motion required of her dry ice position. (CE10, pp. 19-20)

Defendant referred claimant for evaluation with orthopedic surgeon, Thomas Gorsche, M.D. At the initial visit on May 12, 2016, claimant reported ice struck her shovel on April 26, 2016, resulting in left wrist complaints. Dr. Gorsche noted claimant also complained of generalized body ache, particularly on the right side of her neck. He assessed ulnar tiquetral pain of the left wrist and right-sided cervical pain. Dr. Gorsche performed a left wrist injection and referred claimant to Dr. Gordon for evaluation of cervical pain. (JE8, pp. 55-56)

On May 19, 2016, claimant was examined at Allen Occupational Health by Dr. Steven Olsen. Dr. Olsen noted complaints of neck, shoulder, low back, and right hip

pain. Claimant reported her symptoms progressed over the prior six months and attributed the complaints to her shoveling duties at work. (JE9, p. 62) Following examination, Dr. Olsen assessed: cervical strain, lumbar strain, and knee instability. Dr. Olsen recommended a jobsite evaluation and functional capacity evaluation to evaluate claimant's job assignment. (JE9, pp. 65-66)

A jobsite evaluation was performed by John Kruzich, MS, OTR/L, of the dry ice position. Mr. Kruzich issued a report on May 23, 2016. Mr. Kruzich was tasked with assessing the biomechanical stressors of the position on a worker's neck, bilateral shoulders, low back, and right hip regions. Thereby, Mr. Kruzich noted claimant had worked for defendant in a variety of positions over a 12-year period, with the most recent two years in the dry ice position. Claimant attributed her complaints to regular performance of these duties, with symptoms developing over the past 4 to 5 months. (JE10, p. 69)

Mr. Kruzich authored a job description of the dry ice position, noting claimant's responsibility to apply ice to combos throughout the production floor to preserve product. He noted claimant used a metal shovel to fill a cart with dry ice. She would then transport the cart to the production areas and shovel ice into combos. Mr. Kruzich noted there were approximately 25 combos and each required 2 to 3 scoops of dry ice per application. (JE10, p. 70; DEG, p. 45)

Mr. Kruzich identified the following critical physical demands of the dry ice position: frequent lifting floor-to-shoulder of 5 to 8 pounds; frequent horizontal push and pull of 10 to 20 pounds of force; constant bilateral upper extremity reaching from knee to shoulder height; occasional bilateral upper extremity reach over shoulder level; and frequent bending. (JE10, p. 70; DEG, p. 45) Mr. Kruzich measured the range of motion requirements on the cervical spine, shoulders, and lumbar region. (JE10, p. 71; DEG, p. 46) He classified his perceived intensity of exertion as somewhat hard. (JE10, p. 71; DEG, p. 47)

Following completion of his evaluation, Mr. Kruzich offered opinions with respect to potential causal connection between claimant's complaints and her work duties. Mr. Kruzich opined development of shoulder disorders were more often than not due to a combination of risk factors. From an occupational perspective, he opined sustained awkward postures appeared to be strongly related to development of shoulder pathology. He noted highly repetitive work, force in combination with repetition, and force in combination with posture, may also lead to shoulder pathology. Mr. Kruzich opined that, as demonstrated, the dry ice position lacked any of these risk factors. Mr. Kruzich opined that all factors impacting claimant's lumbar spine fell within generally accepted limits for safety. He also opined the limited amount of active range of motion and absence of sustained awkward postures or forceful movements resulted in no significant risk factors for development of a pathological disorder of the neck. In conclusion, Mr. Kruzich opined the proposition of claimant's dry ice job causing, precipitating, aggravating, or accelerating pathological disorders about claimant's neck,

bilateral shoulders, low back, and right hip regions was not biomechanically/medically plausible. (JE10, p. 72; DEG, p. 47)

Claimant returned to Dr. Gorsche on June 7, 2016. She reported some relief with left wrist injections. Claimant reported experiencing multiple aches and pains; she complained of neck pain, mid back, and low back pain with radiation to the right buttock. Dr. Gorsche described claimant as a vague historian. Claimant described a 3 to 6 month history of shoulder pain, right worse than left. She reported her shoulder bothered her with over shoulder-level work; she reported fewer problems since being on light duty. However, she reported her light duty assignment caused neck pain. (JE8, p. 58)

Dr. Gorsche assessed: left wrist pain, improving/resolved; right shoulder pain, post rotator cuff repair; left shoulder pain; and pain of the cervical, thoracic and lumbar spines. Dr. Gorsche ordered MRIs of the bilateral shoulders, cervical spine, thoracic spine, and lumbar spine. He imposed light duty restrictions and prescribed medication. (JE8, p. 59)

From June 13 through June 16, 2016, claimant underwent MRIs of her bilateral shoulders, cervical spine, thoracic spine, and lumbar spine. (JE11, pp. 75-81)

Following completion of the ordered MRIs, claimant returned to Dr. Gorsche on June 21, 2016. Dr. Gorsche opined claimant's spinal MRIs revealed no herniation, but some mild degenerative disc disease of the cervical spine. He opined the right shoulder MRI revealed severe supraspinatus tendinopathy and the left shoulder MRI revealed intermediate grade supraspinatus tendinopathy. Dr. Gorsche opined no surgery was indicated for claimant's shoulders and claimant declined physical therapy and cortisone injections. Dr. Gorsche stated he had nothing else to offer and advised claimant to follow up with Dr. Gordon as needed. (JE8, p. 60)

On July 26, 2016, claimant presented for evaluation of cervical, bilateral shoulder, thoracic, and lumbar regions, with Dr. Gordon. Dr. Gordon noted he previously treated claimant for similar symptomatology during the 2011 to 2013 timeframe. Claimant reported her current symptomatology was "essentially the same" as present when Dr. Gordon last evaluated claimant in 2013, with the exception of the lower extremity involvement. Claimant reported she initially improved significantly, but suffered with periodic pain; then over the past several months, claimant noted increased symptoms she related to performance of the dry ice job. (JE12, p. 82) Claimant complained primarily of pain of the cervical region, bilateral shoulder girdle regions, and thoracolumbar region. Dr. Gordon noted claimant's symptoms continued to worsen despite being on light duty since April 2016. (JE12, pp. 82, 85)

Dr. Gordon summarized claimant's incident reports and care to date. He reviewed the MRIs ordered by Dr. Gorsche. He also reviewed the jobsite evaluation completed by Mr. Kruzich. (JE12, pp. 83-85) Dr. Gordon and claimant discussed her dry ice duties. Claimant expressed belief that filling the high combo, at shoulder height

or above, was the problematic task, particularly with respect to her right shoulder. (JE12, p. 85) Claimant related her neck pain to shoveling ice. She related her thoracolumbar region pain to shoveling, pushing the cart, and walking. (JE12, p. 86)

Dr. Gordon performed a physical examination. (JE12, pp. 86-87) On examination of claimant's cervical spine, Dr. Gordon noted claimant moved freely with observation, but on exam, she demonstrated limited range of motion and apprehension. Claimant also demonstrated tenderness to light touch of the cervical and thoracic paraspinal regions. He opined these findings were not physiological/organic. On examination of the lumbar region, Dr. Gordon noted with observation, claimant moved fully freely at the waist without apprehension. However, on direct examination, left and right rotation at the waist was performed slowly and with apprehension. (JE12, p. 86) On examination of the right shoulder, Dr. Gordon performed impingement testing. During such testing, claimant complained of pain in the trapezial region near the cervical base, which Dr. Gordon opined was not a classic indicator for true shoulder impingement. Dr. Gordon also performed impingement testing on examination of the left shoulder. He opined claimant complained of pain in the left trapezial region near the cervical base, which was not consistent with true shoulder glenohumeral impingement. (JE12, p. 87) Following examination, Dr. Gordon assessed: cervical pain; bilateral shoulder girdle region pain; thoracic pain; and lumbosacral pain. (JE12, pp. 87-88)

With respect to the cervical pain, Dr. Gordon opined claimant's MRI did not reveal a herniation and was actually improved over the 2012 cervical MRI. He did note the presence of mild spondylosis (arthritis) of the cervical region. Dr. Gordon opined examination did not reveal notable objective findings of the cervical region. (JE12, p. 87) He further opined examination was nonphysiologic/non-organic/not consistent with a musculoskeletal disorder about the cervical region. Dr. Gordon specifically identified his finding of full range of motion on observation, but limited motion on direct exam; and tenderness to light palpation without evidence of spasm or tightness. Additionally, Dr. Gordon noted claimant reported worsening of symptoms since being on light duty, when doing minimal activity. He opined if the dry ice job was a significant contributing factor in claimant's symptoms, he would have expected notable improvement and certainly not worsening on light duty. (JE 12, p. 88)

With respect to bilateral shoulder girdle pain, Dr. Gordon opined claimant's pain was located primarily in the bilateral trapezii, as opposed to the glenohumeral (GH) or acromioclavicular (AC) joint regions. Dr. Gordon opined claimant's MRIs revealed findings about the rotator cuff and labrums, which would be considered incidental because the findings did not correlate with claimant's examination or complaints. He opined examination revealed no objective evidence to substantiate any disorder, including a myofascial disorder, given claimant's lack of spasm or tightness of the trapezii. He noted claimant complained of tenderness to light palpation of the trapezii, a finding non-physiological/not consistent with a musculoskeletal disorder, including a myofascial disorder. Additionally, Dr. Gordon noted claimant reported worsening of symptoms since being on light duty, when doing minimal activity. He opined if the dry

ice job was a significant contributing factor in claimant's symptoms, he would have expected notable improvement and certainly not worsening on light duty. (JE12, p. 88)

Dr. Gordon also assessed thoracic pain and lumbosacral pain. Dr. Gordon opined claimant's thoracic MRI showed aging changes, without injurious phenomenon. He also found no objective examination findings of the thoracic region. With respect to the lumbosacral region, Dr. Gordon opined the lumbar MRI revealed no herniation, just normal aging changes inconsistent with an injurious pattern. He opined examination did not reveal objective evidence of lumbosacral disorder or dysfunction. Dr. Gordon also noted the exhibition of non-physiological/non-organic findings, including tenderness to light palpation and differential in behavior between observation and direct exam. Dr. Gordon noted claimant reported worsening of symptoms since being on light duty, when doing minimal activity. He opined if the dry ice job was a significant contributing factor in claimant's symptoms, he would have expected notable improvement and certainly not worsening on light duty. Additionally, Dr. Gordon noted claimant fell within the obese range, which may cause thoracolumbar pain. (JE12, p. 88)

Dr. Gordon expressed desire to personally evaluate the dry ice job to assess its biomechanical factors, in order to determine if there was any relationship between claimant's duties and complaints. In the interim, he ordered physical therapy and prescribed medication. (JE12, p. 89) Claimant participated in physical therapy as ordered. (JE13, pp. 106-120)

Arnold Delbridge, M.D., reviewed claimant's bilateral shoulder MRIs. He thereafter authored a letter to claimant's counsel recommending arthroscopic intervention. (CE21, p. 57)

Dr. Gordon was scheduled to perform a jobsite evaluation with claimant on August 17, 2016. The evaluation was cancelled as a result of claimant's absence due to illness. (JE12, p. 93)

On September 7, 2016, claimant presented to Dr. Gordon with complaints of pain of the cervical, bilateral shoulder girdle, and lumbar regions. Claimant denied thoracic region pain. (JE12, p. 94) Dr. Gordon performed an examination and noted some non-physiological findings. (JE12, pp. 94-95)

Dr. Gordon also performed a jobsite evaluation that date. (JE12, pp. 96-97) During the evaluation, Dr. Gordon observed claimant perform her duties and also performed the duties himself. With the exception of the high combo box which was filled just three times per hour, Dr. Gordon observed no awkward postures, sustained postures, or otherwise deleterious positions of the bilateral shoulders. (JE12, p. 96) He opined the force and repetition on the shoulders was low. With respect to the cervical region, Dr. Gordon observed no sustained or awkward postures, no notable force upon or generated by the neck, and no deleterious kinematics. With respect to the lumbar region, Dr. Gordon opined the job was low frequency and done at claimant's own pace, with low force upon the lumbar region. (JE12, p. 97)

Following observation and performance of the dry ice job, Dr. Gordon opined the job would not precipitate, aggravate, or accelerate any type of disorder about the cervical or thoracolumbar regions. He opined the task of filling the high combo box infrequently would possibly pose a very low risk for contributing to rotator cuff-related disorders. He found the job would not contribute to labral-related disorders due to lack of sufficient biomechanical stressors, would not precipitate any tears of the bilateral trapezial muscle regions, and would not cause myofascial pain. (JE12, p. 97)

Dr. Gordon assessed cervical pain. He opined it was not plausible to relate a cervical disorder of any type to the dry ice job. As the cervical condition was not work-related, he recommended no further evaluation or treatment. He opined claimant sustained no permanent impairment and required no restrictions for any work-related cervical disorder. (JE12, p. 97)

Dr. Gordon assessed thoracic pain and lumbosacral pain. He opined claimant's duties would not contribute to a thoracic or lumbosacral disorder. As neither condition was work-related, he recommended no further evaluation or treatment. He opined claimant sustained no permanent impairment and required no restrictions for any work-related thoracic or lumbosacral disorder. (JE12, p. 98)

Dr. Gordon assessed bilateral shoulder girdle region pain. He opined claimant's duties would not contribute to a tear or myofascial disorder of the bilateral trapezii. As a trapezius condition was not work-related, he recommended no further evaluation or treatment. He opined claimant sustained no permanent impairment and required no restrictions for any work-related trapezius condition. Dr. Gordon opined claimant's duties posed no risk of labral disorder. Dr. Gordon opined claimant's job duties did pose a very low risk for rotator cuff disorder due to the high combo task; however, he did not believe such a disorder had been realized based upon his clinical evaluation. Dr. Gordon opined claimant's presentation was not consistent with a rotator cuff disorder. (JE12, p. 98)

Dr. Gordon discharged claimant with respect to all regions except the bilateral shoulders. Given MRI findings in the shoulders, Dr. Gordon referred claimant for orthopedic evaluation. In the interim, he imposed work restrictions and prescribed medication. (JE12, p. 99)

Defendant requested further clarification from Dr. Gordon, who issued responses to posed questions on September 7, 2016. Dr. Gordon opined claimant's neck, low back, hip, and labral conditions were not causally related to claimant's employment. He did, however, opine claimant's bilateral shoulder injuries were work-related. Specifically, he highlighted the findings of the glenohumeral regions and right-sided impingement. (JE12, p. 100) Dr. Gordon elaborated to state it was possible claimant's duties aggravated an underlying condition, and as a result, he recommended orthopedic evaluation. (JE12, p. 101)

At the referral of Dr. Gordon, on September 19, 2016, claimant presented to Matthew Bollier, M.D. for evaluation of bilateral shoulder pain. Claimant complained of pain in the bilateral anterior shoulders, as well as over the posterior neck and shoulder musculature, right greater than left. (JE14, p. 121) Dr. Bollier reviewed claimant's shoulder MRIs and opined they revealed tendinopathy changes. He also performed a physical examination. (JE14, p. 123)

Following examination, Dr. Bollier assessed bilateral shoulder pain, most likely myofascial in nature. (JE14, p. 123) He opined the most significant source of claimant's pain was the trapezius muscles. Dr. Bollier opined there is no surgical treatment for myofascial pain. Dr. Bollier opined claimant's MRI showed evidence of bilateral rotator cuff tendonitis, not surgical in nature. He stated surgery was not recommended due to diffuse pain around the shoulder and neck regions. Dr. Bollier opined claimant's bilateral shoulder symptoms were not related to her job duties. He opined it was unlikely cumulative use over the two years claimant held the dry ice job would cause changes seen on claimant's MRIs. Dr. Bollier imposed no restrictions with respect to an alleged work injury. He recommended claimant follow up with her primary care provider and treat conservatively. (JE14, p. 124)

Defendant provided Dr. Gordon with a copy of Dr. Bollier's report for review. Dr. Gordon concurred with Dr. Bollier's opinion claimant's bilateral shoulder symptoms were not related to her work duties. (JE12, p. 103)

Thereafter, defendant denied liability for claimant's alleged injuries. On September 27, 2016, claimant was placed on bid walk. Claimant watched the bid board and began studying at Hawkeye Community College. (Claimant's testimony)

At the referral of claimant's counsel, claimant presented to physiatrist, Dr. Manshadi for an IME on October 4, 2016. During interview, claimant reported she began the dry ice job in December 2014, and over time, she noticed significant neck, upper back, shoulder, and low back pain. (CE22, p. 58) Claimant complained of low back and neck pain, a knotting sensation of the upper trapezius, and weakness of the shoulders. (CE22, p. 59) Dr. Manshadi stated he reviewed claimant's medical records, but did not detail the records reviewed. (CE22, p. 58) Dr. Manshadi reviewed Mr. Kruzich's report. Based thereon, Dr. Manshadi opined claimant's dry ice job was fairly physical and required a lot of reaching, bending, and lifting. He requested claimant demonstrate the posture in which she performed her tasks. (CE22, p. 59) Dr. Manshadi performed a physical examination. (CE22, p. 60)

Following records review, interview, and examination, Dr. Manshadi issued assessments and opinions regarding claimant's conditions. Dr. Manshadi assessed bilateral shoulder pain with clinical evidence of impingement syndrome and decreased range of motion. He also cited to pathology changes on MRI. (CE22, p. 60) Dr. Manshadi assessed evidence of upper trapezius spasms and myofascial pain, probably secondary to bilateral shoulder pathology, and causing neck pain. He noted

degenerative changes on cervical MRI. He also assessed low back pain with evidence of right sacroiliac (SI) joint dysfunction. (CE22, p. 61)

Dr. Manshadi opined claimant's dry ice duties caused significant aggravation of claimant's bilateral shoulders due to cumulative trauma over a period of two years. He also opined claimant's job duties caused significant strain on claimant's low back and SI joint, causing SI joint dysfunction. Dr. Manshadi stated he was "very much amazed" that Mr. Kruzich identified claimant's job duties and requirements, but did not feel the dry ice position would cause issues of the shoulders, neck, or low back. Dr. Manshadi opined claimant's duties could cause such issues. Dr. Manshadi recommended therapy and rehabilitation of claimant's neck, upper trapezius, bilateral shoulders, low back, and hip. He recommended restrictions of: avoiding reaching, shoulder height, or overhead activities in a repetitious manner; avoidance of lifting over 5 pounds with either upper extremity; only occasional lifting; avoidance of repetitious bending, stooping, or twisting; avoidance of squatting; sitting and standing as needed; and avoidance of prolonged positions of the neck. (CE22, p. 61)

In August 2017, claimant bid on and won a position at defendant. She returned to work in the boxing rib tips/brisket/mis-cut position. Claimant lined boxes with plastic and filled boxes with meat. She would fill each box with approximately 30 pounds of meat, seal the box, and then push the box forward onto a conveyor. (Claimant's testimony)

Defendant provided Mr. Kruzich with a copy of Dr. Manshadi's IME for review. Following review, he authored a written response dated July 21, 2017. Mr. Kruzich noted Dr. Manshadi opined claimant sustained neck, bilateral shoulder, and low back injuries from repetitive twisting, bending, and shoveling of dry ice. Mr. Kruzich disagreed with these opinions. Mr. Kruzich noted he observed claimant perform the actual duties of her job, completed the job tasks personally, took measurements, and compared objective data to medical literature. (JE10, 73; DEA, p. 1)

Mr. Kruzich provided further analysis, referring to the AMA Guides to the Evaluation of Disease and Injury Causation, Second Edition. With respect to low back conditions, the AMA Guides set forth the following regarding occupational risk factors: insufficient evidence in medical literature of heavy work or awkward postures and risk factors for low back pain; insufficient evidence for an association between trunk flexion or twisting and low back pain; and insufficient evidence for an association between standing and walking greater than 2 hours per day and low back pain. With respect to neck conditions, the AMA Guides set forth the following regarding occupational risk factors: insufficient evidence in medical literature for heavy physical work, neck posture, prolonged work in a sedentary position, or repetitive and precision work, as risk factors for neck pain. (JE10, p. 73; DEA, p. 1) With respect to shoulder conditions, the AMA Guides set forth the following regarding occupational risk factors: insufficient evidence in medical literature which associates forceful work, work in cold environments, or length of employment, with shoulder dysfunction; some evidence for an association between a combination of risk factors (force and repetition, force and posture) and

highly repetitive work alone, with shoulder dysfunction; and strong evidence associating awkward postures with shoulder dysfunction. Mr. Kruzich opined the dry ice position lacked any sustained awkward shoulder postures, required low force output, and did not meet the generally accepted definition of high repetitions. Based upon his analysis, Mr. Kruzich opined it was more likely than not that claimant's injuries were not directly caused by the dry ice job. He opined Dr. Manshadi's opinions were not supported by the job analysis and medical literature. (JE10, p. 74; DEA, p. 2)

Dr. Manshadi provided deposition testimony on November 13, 2017. Dr. Manshadi admitted he never observed or performed the dry ice job. Instead, his opinions were based upon claimant's description and documents reviewed, specifically, Mr. Kruzich's report. In response to inquiry as to what portion of claimant's duties stressed her shoulders, Dr. Manshadi opined claimant had to perform a lot of shoulder height and overhead activities, as well as a lot of repetitious shoulder movement, including lifting, pushing, pulling, and reaching. Dr. Manshadi opined the activities described by Mr. Kruzich stressed claimant's shoulders and caused impingement syndrome. He opined the activities of over-shoulder reaching, forward reaching, and horizontal pushing/pulling, could lead to such shoulder issues if performed repetitiously. Dr. Manshadi also opined the repetitious push/pull, lifting, and reaching caused impingement, which subsequently resulted in trapezius pain. Finally, Dr. Manshadi opined scooping dry ice caused claimant's low back and SI joint pain. He opined such an activity was similar to shoveling snow and required twisting at the waist, which could lead to damage of the SI joint ligaments and SI joint dysfunction. (CE23, pp. 65-66)

Shortly prior to evidentiary hearing, claimant bid into and won a janitorial/building maintenance position at defendant. She earns \$16.50 per hour, higher than she earned in the dry ice job. Claimant testified this job, off the production line, is easier on her body. She must accomplish her duties, but may work at her own pace. Claimant continues to complain of neck and bilateral shoulder problems in her new position. Claimant testified she suffers with neck pain with sweeping, mopping, and dusting motions. She also has pain and decreased strength of her bilateral shoulders, right worse than left. Overall, claimant enjoys her job. (Claimant's testimony)

Claimant continues to pursue pre-nursing courses. She completed the coursework for a CNA position, but did not take the licensing test. Claimant believes CNA work is too physically demanding and pays less than she earns at defendant. Claimant testified it will take her 1.5 years to complete her LPN course work and even longer to complete her RN degree. Claimant testified she is uncertain if she can physically tolerate such work, but desires to try and at minimum, learn skills that could be applicable to other positions like medication aide. Claimant testified nursing positions would bring her higher wages than her employment at defendant. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained cumulative injuries to her neck, bilateral shoulders, and/or low back arising out of and in the course of her employment with defendant. If claimant prevails on this threshold determination, the proper date of injury must be determined. Claimant has alleged injury dates of: April 26, 2016 (File No. 5058038), May 13, 2016 (File No. 5058039), and September 27, 2016 (File No. 5058041).

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

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

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); Dunlavy 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability

manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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).

Claimant has alleged she suffered cumulative injury to three body parts: neck, shoulders/trapezius, and low back. The question of causal relationship between claimant's work duties in the dry ice position and her complaints to these body parts will be addressed individually.

Claimant alleges she suffered injury to her cervical region. Dr. Gordon, following observation of claimant and personal performance of the dry ice position, opined the job would not precipitate, aggravate, or accelerate any type of disorder of the cervical region. Mr. Kruzich, after observation of claimant and personal performance of the job,

opined it was not biomechanically/medically plausible for the dry ice job to cause, precipitate, aggravate, or accelerate pathological disorders about claimant's neck. He highlighted a lack of significant risk factors for neck pathology. Dr. Manshadi noted changes on claimant's cervical MRI and opined claimant's upper trapezius spasms and myofascial pain caused neck pain.

Following consideration of the medical opinions in evidence, I award greatest weight to the opinion of Dr. Gordon, as buttressed by the consistent opinion of Mr. Kruzich. Both medical professionals observed and performed the dry ice job. Both providers authored extensive reports regarding their findings and opinions. Dr. Manshadi's opinions are summary in nature and lack the detailed analysis provided by Dr. Gordon; in addition, Dr. Manshadi did not have the benefit of observing or performing claimant's precise duties. As I award greatest weight to the opinions of Dr. Gordon, as buttressed by Mr. Kruzich, I find claimant has failed to carry her burden of proving by a preponderance of the evidence that she sustained a cumulative injury to her neck arising out of and in the course of her employment with defendant while performing the dry ice job.

Claimant also alleges injury to her low back. Dr. Gordon, following observation of claimant and personal performance of the dry ice position, opined the job would not precipitate, aggravate, or accelerate any type of disorder of the thoracolumbar region. Mr. Kruzich, after observation of claimant and personal performance of the job, opined it was not biomechanically/medically plausible for the dry ice job to cause, precipitate, aggravate, or accelerate pathological disorders about claimant's low back. He opined all factors bearing on claimant's low back fell within accepted safety limits. Dr. Manshadi opined claimant's duties caused SI joint dysfunction and low back pain, twisting at the waist, specifically.

Following consideration of the medical opinions in evidence, I award greatest weight to the opinion of Dr. Gordon, as buttressed by the consistent opinion of Mr. Kruzich. Both medical professionals observed and performed the dry ice job. Both providers authored extensive reports regarding their findings and opinions. Dr. Manshadi related claimant's symptoms specifically to the amount of twisting performed at work; however, he did not have the benefit of observing or performing claimant's precise duties. Both Dr. Gordon and Mr. Kruzich observed and performed the duties. These providers are in a superior position to offer an opinion with respect to whether claimant's duties caused injury. As I award greatest weight to the opinions of Dr. Gordon, as buttressed by Mr. Kruzich, I find claimant has failed to carry her burden of proving by a preponderance of the evidence that she sustained a cumulative injury to her low back arising out of and in the course of her employment with defendant while performing the dry ice job.

Finally, claimant alleges injuries to her bilateral shoulders. Mr. Kruzich, after observation of claimant and personal performance of the job, opined it was not biomechanically/medically plausible for the dry ice job to cause, precipitate, aggravate, or accelerate pathological disorders about claimant's shoulders. He highlighted a lack

of risk factors for shoulder pathology. Dr. Gordon was initially more cautious in his opinions. Dr. Gordon opined claimant's job duties did not cause any labral-related disorders, tears of the trapezial muscle regions, or myofascial pain. However, he opined the task of filling the high combo resulted in a very low risk of contributing to rotator cuff pathology. Dr. Gordon did not believe rotator cuff pathology had been realized, based on clinical evaluation. Due to the possibility, however, Dr. Gordon referred claimant for orthopedic evaluation with Dr. Bollier. Dr. Bollier, following evaluation, opined claimant's bilateral shoulder symptoms were not related to her job duties and further opined it was unlikely cumulative use over two years caused the changes viewed on shoulder MRIs. Thereafter, Dr. Gordon concurred with Dr. Bollier's opinion that the bilateral shoulder conditions were not work-related. Dr. Manshadi opined claimant's duties caused significant aggravation of claimant's bilateral shoulders. He relied upon claimant's performance of a lot of shoulder height activities, overhead activities, and repetitious shoulder movements. He opined the activities caused impingement syndrome and subsequently, trapezius pain.

Following consideration of the medical opinions in evidence, I award greatest weight to the opinion of Dr. Gordon, as supplemented by the opinion of Dr. Bollier and buttressed by the consistent opinion of Mr. Kruzich. Both Dr. Gordon and Mr. Kruzich observed and performed the dry ice job. Both providers authored extensive reports regarding their findings and opinions. Due to some limited question regarding a potential causal relationship between claimant's shoulder conditions and her duties, Dr. Gordon competently sought evaluation by Dr. Bollier. Dr. Bollier is an orthopedic specialist and therefore, his opinion is entitled to increased weight with respect to claimant's shoulder pathology. Following examination, Dr. Bollier issued opinions which were consistent with the opinions of Dr. Gordon and Mr. Kruzich.

Dr. Manshadi related claimant's symptoms specifically to the amount of overhead and shoulder height activities, as well as repetitious shoulder movements, performed at work. However, he did not have the benefit of observing or performing claimant's precise duties, as did Dr. Gordon and Mr. Kruzich. These providers are in a superior position to offer an opinion with respect to whether claimant's duties caused injury. Dr. Bollier, an orthopedic specialist, also disagreed with Dr. Manshadi's opinions. Dr. Manshadi's opinions were summary in nature and lacked the detail described by Dr. Gordon and Mr. Kruzich; he also lacks the specialized training possessed by Dr. Bollier.

As I award greatest weight to the opinions of Dr. Gordon, as supplemented by the opinion of Dr. Bollier and buttressed by the consistent opinion of Mr. Kruzich, I find claimant has failed to carry her burden of proving by a preponderance of the evidence that she sustained a cumulative injury to her bilateral shoulders/trapezius region arising out of and in the course of her employment with defendant while performing the dry ice job.

As claimant failed to carry her burden of proving by a preponderance of the evidence that any of the alleged injuries to her neck, bilateral shoulders, or low back are causally related to her duties in the dry ice job, consideration of the following issues are

unnecessary: proper date of injury; causation and extent of temporary disability; causation and extent of permanent disability; and commencement date for permanency benefits.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. As claimant failed to prevail on the merits of her claim, the requested costs are not taxed to defendant.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5058038 (Date of Injury: April 26, 2016), File No. 5058039 (Date of Injury: May 13, 2016), File No. 5058040 (Date of Injury: May 19, 2016), File No. 5058041 (Date of Injury: September 27, 2016), and File No. 5060271 (Date of Injury: April 23, 2016):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Claimant shall take nothing from these proceedings.

Defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 24th day of January, 2019.



ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/sam

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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.