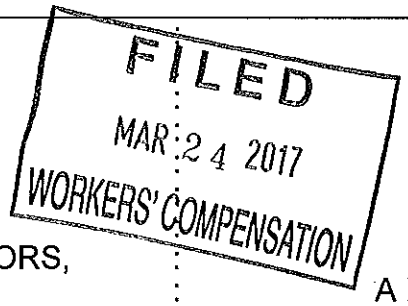
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JOSEPH LEWIS, Claimant, vs. WINDSOR WINDOWS & DOORS, Employer, and TWIN CITY FIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5048698 ARBITRATION DECISION Head Note Nos.: 1108; 1402.40

STATEMENT OF THE CASE

Claimant Joseph Lewis, ("Lewis") filed a petition in arbitration on September 9, 2015, alleging he sustained injuries to his neck, back, legs, right shoulder, left hand, and body as a whole on April 22, 2014, while working for the defendant, Windsor Windows & Doors ("Windsor"). Windsor and its insurer, the defendant, Twin City Fire Insurance Company ("Twin City"), filed an answer on October 6, 2015.

An arbitration hearing was held on November 16, 2016, in Des Moines, Iowa, at the Division of Workers' Compensation. Attorney Richard Schmidt represented Lewis. Lewis appeared and testified. Attorney Stephen Spencer represented Windsor and Twin City. Clint Jubell and Peter Crivaro appeared and testified on behalf of Windsor and Twin City. Exhibits 1 through 12, and A through Y were admitted into the record. The record was left open through January 25, 2017, for the receipt of post-hearing briefs. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Windsor and Twin City waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Lewis and Windsor at the time of the alleged injury.

2. Although entitlement to temporary benefits cannot be stipulated, Lewis was off work from July 2, 2014 through November 19, 2014.

3. If Lewis has sustained a permanent disability, the disability is an industrial disability.

4. At the time of the alleged injury Lewis' gross earnings were $308.71 per week, he was single and entitled to one exemption, and the parties believe the weekly rate to be $205.49.

ISSUES

1. Did Lewis sustain an injury on April 22, 2014, which arose out of and in the course of his employment with Windsor?

2. If Lewis sustained an injury which arose out of and in the course of his employment with Windsor, is the alleged injury a cause of temporary disability during a period of recovery?

3. If Lewis sustained an injury which arose out of and in the course of his employment with Windsor, is the alleged injury a cause of permanent disability?

4. Is Lewis entitled to temporary disability benefits from July 2, 2014 through November 19, 2014?

5. Did Lewis refuse suitable work consistent with his disability?

6. If Lewis has sustained a permanent disability, what is the extent of his disability?

7. If Lewis has sustained a permanent disability, is the commencement date for permanent partial disability benefits November 20, 2014?

8. Is Lewis entitled to recover the cost of an independent medical examination?

9. Are Windsor and Twin City entitled to a credit for short-term disability payments made to Lewis?

FINDINGS OF FACT

Lewis lives in Des Moines. (Transcript, pages 7-8) Lewis graduated from high school in 1986. (Tr., p. 8; Ex. V, p. 4) Lewis testified that he attended Des Moines Area Community College after high school and he studied building trades, landscape design, and architecture. (Tr., p. 8) In his answers to interrogatories, Lewis reported he attended an architecture and design program in San Francisco, California, for three years, but he did not graduate. (Ex. V, p. 4) Lewis smokes one pack of cigarettes per day. (Ex. 3, p. 1)

Lewis testified he has a history of criminal convictions, including criminal mischief, possession of weapons, simple assault, and minor theft. (Tr., p. 9) Lewis reported he has not been convicted of any criminal offenses for seven or eight years. (Tr., p. 10)

Lewis testified he has worked in fast food, construction, landscaping, carpentry, and as a receptionist. (Tr., pp. 8-9, 11) From 1999 through 2004 Lewis owned a lawn care business. (Ex. U, p. 3) Lewis worked for Glacier Properties from 2004 through 2009. (Ex. U, p. 3) Lewis developed bilateral carpal tunnel syndrome while working for Glacier Properties, he received workers' compensation and surgery on one hand, and he left his employment. (Tr., pp. 83-84) Lewis also worked as a maintenance worker for Town Square Apartments, performing carpentry, painting, electrical, and plumbing work. (Ex. V, p. 5) At the time of the hearing Lewis was working for Willis Auto parking cars twenty-five hours per week. (Tr., p. 9)

Lewis has a history of cervical spine, thoracic spine, lumbar spine, shoulder, and upper extremity complaints, dating back to 1988. Lewis underwent lumbar magnetic resonance imaging in 1988, which revealed "L5-S1 noncompressive disc bulging." (Ex. A, p. 1) In 1995, Lewis was involved in a rear-end collision and he was assessed with whiplash and a low back strain. (Ex. K, pp. 1-2) In January 1998, he sought emergent care, and the medical staff documented he was complaining of "[l]ower cervical upper thoracic neck/back pain, sudden onset of pain, worse when working or turning head/neck – Denies any recent injury or lifting/moving heavy objects." (Ex. A, pp. 2-3)

In June 2001, Lewis sought medical care and reported he was injured at work when a steel beam fell on his lower extremities while he was holding a 300 pound drywall sheet. (Ex. K, p. 6) Lewis complained of pain from his neck down, popping in his neck with movement, sharp pain with "some distal radiation and numbness," right shoulder pain, and knee and lumbar pain with prolonged sitting. (Ex. K, pp. 3-12)

In February 2002, Lewis complained of pain from his neck through his right shoulder, and numbness and coldness in his hands. (Ex. K, p. 14) Medical staff assessed Lewis with a "C5-6 herniated disc" and recommended a neurosurgical evaluation at the University of Iowa Hospitals and Clinics ("UIHC"). (Ex. K, p. 14) Lewis continued to receive treatment, complained of radiating neck pain he rated a ten out of ten, and reported the pain was worse with rotation, lying down, and movement. (Ex. K, p. 22) Lewis did not attend the evaluation at the UIHC and in August 2003 he reported he was doing okay. (Ex. K, p. 27)

Lewis attended an appointment in Des Moines on December 29, 2005, complaining of neck pain, bilateral shoulder pain, trapezial pain, and headaches. (Ex. K, p. 31) Lewis requested Barbara Kruglar, PA, complete disability papers for him and she documented she refused to complete the paperwork without an orthopedic consultation. (Ex. K, p. 32)

In 2007, Lewis was hit from behind while he was sitting unbelted in a parked car. (Ex. K, p. 33) Lewis sought emergent care complaining of "pain in neck all the way down," including his head, neck, mid-thoracic spine, and low back. (Ex. K, pp. 33-34) Lewis later complained of right shoulder pain from the car accident. During an appointment on January 30, 2008, he reported he had trouble lifting his arm over his head, a ripping sound in his arm, and pain from his neck to his deltoid. (Ex. K, p. 35) Lewis was assessed with impingement syndrome, and he received medication, a shoulder injection, and physical therapy. (Ex. K, pp. 35-36)

Lewis continued to complain of right shoulder pain. (Ex. L) Following an orthopedic consultation, he received magnetic resonance imaging in May 2008, and the reviewing radiologist listed an impression of "articular sided tear occurring at the anterior supraspinatus footprint on the greater tuberosity compromising 50-75% of the total thickness of the tendon with an underlying subcortical cyst. There is no evidence of a full thickness rotator cuff tear or muscle atrophy." (Ex. A, p. 7) The orthopedic surgeon recommended conservative treatment with physical therapy, injections, and anti-inflammatory medication. (Ex. L, p. 3)

In September 2008, Lewis attended an appointment with his family practice physician, Edward Steinmann, D.C., D.O., complaining of back pain. (Ex. H, p. 1) Dr. Steinmann assessed Lewis with lumbago, thoracic spine pain, cervicalgia, and myalgia and myositis unspecified. (Ex. H, p. 1)

In 2009, Lewis complained of pain, numbness in both hands and wrist pain while working for Town Square Apartments. (Ex. F, p. 2) Lewis was referred to an orthopedic surgeon, diagnosed with bilateral carpal tunnel syndrome, and he underwent a left carpal tunnel release, but continued to complain of numbness in his thumb, index, long, and ring fingers. (Ex. F, pp. 2-6) Lewis's medical records are inconsistent with his testimony as to when this injury and the subsequent surgery occurred. Lewis testified he developed bilateral carpal tunnel syndrome while working for Glacier Properties, he received workers' compensation and surgery on one hand, and he left his employment. (Tr., pp. 83-84)

Lewis returned to Dr. Steinmann on April 28, 2010, complaining of right shoulder, right knee, back, and neck pain. (Ex. H, p. 4) Dr. Steinmann documented Lewis reported his "neck is stiff and sore off and on as well has his back hurts esp with slight forward bending." (Ex. H, p. 4) Lewis was referred to the UIHC and received magnetic resonance imaging, which revealed "a full-thickness partial rotator cuff tear and tendinopathy with positive impingement signs." (Ex. M, pp. 1-3) In December 2010, Lewis underwent a right shoulder arthroscopy and subacromial decompression. (Ex. M, p. 5)

In 2011, Lewis continued to complain he was experiencing neck pain, thoracic pain, low back pain, and shoulder pain. (Ex. H, pp. 6-10) Dr. Steinmann noted Lewis reported increased pain in his neck when turning left to look. (Ex. H, p. 10) In August that year, Lewis reported he fell on the concrete, hit his right shoulder, elbow, hip and

knee on the ground, caught himself with his left hand which was sore, and hit his head. (Ex. H, p. 12) Dr. Steinmann noted Lewis had decreased range of motion in his right shoulder and that he was wearing a sling to help with the pain. (Ex. H, p. 12) Dr. Steinmann assessed Lewis with a shoulder and upper arm sprain, a neck sprain, a thoracic sprain, and contusions of the shoulder region, elbow, and knee. (Ex. H, pp. 12-13) During a follow-up appointment Lewis reported his right shoulder pain was worse, he was experiencing clicking and popping, his neck hurt, and his knee pain was interfering with his ability to walk. (Ex. H, p. 14)

On June 17, 2013, Windsor hired Lewis to work as a machine operator full-time. (Tr., p. 12; Ex. T, p. 2) Windsor manufactures windows and doors. (Tr., p. 11) Lewis testified when Windsor hired him he had not worked for a few years. (Tr., p. 13) Lewis reported during the time he was unemployed he worked odd jobs mowing lawns and cutting shrubs. (Tr., p. 13) Lewis testified that when Windsor hired him he did not disclose any of his prior physical problems because he was fine. (Tr., p. 85)

Lewis testified before he worked for Windsor he developed carpal tunnel while working for another employer, but he had no other workplace injuries to his neck, back, or feet. (Tr., p. 20) Lewis pursued workers' compensation for carpal tunnel syndrome and he received compensation. (Tr., p. 22) Lewis testified he was involved in a car accident in 2008, which caused a right rotator cuff tear. (Tr., p. 21) Lewis reported he pursued a claim against the other driver and he received compensation. (Tr., p. 21)

Windsor assigned Lewis to special parts fabrication where he took wood mill parts and adjusted the parts to different measurements and retooled the parts to fit together in windows. (Tr., p. 12) Lewis used table saws, miter saws, jointers, sanders, and planers. (Tr., p. 12) Lewis worked from 6:00 a.m. to 2:30 p.m. (Tr., p. 12) After retooling each part, Lewis stacked the part on a rolling cart with shelving. (Tr., p. 15) The cart extended above his head and the bottom shelf was located at ankle level. (Tr., p. 16) Lewis reported the position required him to bend, but it did not require heavy lifting. (Tr., p. 17) Lewis testified he would make between 2,000 and 3,000 cuts per day (Tr., p. 19) Lewis also assisted in the painting room where he painted the parts. (Tr., p. 19) Lewis relayed he had no problem performing his work in special parts fabrication. (Tr., pp. 19, 22)

In 2014, Windsor installed a new powder paint assembly line, separate from the painting room. (Tr., pp. 23, 25) On April 14, 2014, Lewis's manager, Luke Rienstra, requested Lewis work on the paint line. (Tr., p. 23; Ex. 11, p. 1) Jubell, a coworker, showed Lewis how to perform the work. (Tr., p. 24)

The line contained hooks or hangers for the parts so the parts could be painted by a machine. (Tr., p. 25) The parts included metal door jams, casements, window sills, and other items. (Tr., p. 26) The employees would grab a stack of aluminum parts and hang the parts on hangers on racks. (Tr., pp. 27, 150) The employees would fill the racks, which had hangers down near the floor to approximately seven feet off the floor, while the racks were moving. (Tr., pp. 27-28) Lewis worked with a coworker to fill

the racks. (Tr., p. 28) The racks held small and larger metal pieces. (Tr., p. 28) Lewis testified he would turn, twist, and hang parts. (Tr., p. 28)

Lewis reported approximately three to four days after he initially worked on the paint line, Rienstra approached him and told him he needed to work on the paint line. (Tr., p. 29) Lewis complied, but reported he started to feel "stress in my back and neck" and pain. (Tr., p. 29) Lewis testified he told Rienstra he could not work on the paint line anymore because he could not bend and twist due to a car accident he was involved in eight years before. (Tr., p. 30)

Lewis reported Rienstra sent him back to the paint line, so he contacted Linda Mallaney in human resources. (Tr., pp. 30-31) Lewis relayed Mallaney asked him if he had any injuries and responded he was in a car accident eight years before and he had "suffered soft tissue damage." (Tr., p. 32) Lewis testified Mallaney responded she did not want him to get hurt, she would speak with his manager, and she instructed him to return to work. (Tr., p. 32) During the hearing Mallaney acknowledged Lewis contacted her and told her he had pre-existing back and shoulder issues and that he should not be performing that type of work. (Ex. 11, p. 1) Mallaney documented she informed Lewis the next time he was asked to work on the paint assembly line he should refuse and state why he was refusing and/or come to human resources and she would address it with his manager. (Ex. 11, p. 1) Lewis reported Rienstra told him he would not send him back to the paint line. (Tr., p. 87)

Jubell testified that on April 22, 2014, he went over to Lewis and told him he needed help on the paint line. (Tr., p. 120) Jubell reported Lewis told him he had a prior back injury and his back was sore. (Tr., pp. 120-121) Lewis testified he told Jubell Rienstra had told him he would not have to work on the paint line again because it hurt his back and neck. (Tr., pp. 87-88)

Lewis did not contact Mallaney when Jubell approached him on April 22, 2014. Lewis returned to the paint line. During direct examination, Lewis reported,

> A. So we were loading. We loaded one. We loaded the first bundle and we had space for probably six more. So we went back and got six more. And as I was – as we – as Clint and I were bending down to load it, my back popped and I hit the ground. I lost all feeling, all strength in my legs, and I hit the ground.
>
> Q. When you hit the ground, what did you strike, did you – how did you fall?
>
> A. I had five pieces in my left hand and one in my right hand. So when I hit the ground, the five pieces in my hand smashed my hand against the ground, and my knees hit the ground. So I basically hit the ground with my arm flat and my knees and this hand (indicating).

(Tr., p. 35) Lewis testified he landed flat with his left arm because he had a bundle in his left arm, and caught himself with his right hand. (Tr., pp. 35-36) Lewis reported pain shot up his arm through his shoulder blades, down his back, and up his neck. (Tr., pp. 36-37) Lewis relayed the pain felt like a lightning bolt. (Tr., p. 37) Lewis did not receive emergent care following the incident and went home with his girlfriend.

Mallaney documented on April 22, 2014, Lewis was working on the paint line and at 8:30 a.m., he reported he felt a "pop" in his back and he appeared to be in pain from upper back issues. (Ex. 11, p. 1) Mallaney came up into the work area and observed Lewis was applying ice packs to his upper back until a family member arrived. (Ex. 11, p. 1) Mallaney documented Lewis told her he had back issues in the past and he had medication at home to help with the pain. (Ex. 11, p. 1) Mallaney noted she and Rienstra helped Lewis into a vehicle. (Ex. 11, p. 1)

On April 24, 2014, Lewis attended an appointment with his personal physician, Dr. Steinmann, complaining of lower and mid back pain, right shoulder pain, bilateral knee pain, and that his first two fingers on his left hand had been smashed. (Exs. 3, p. 1; H, p. 16) Lewis reported he told his manager at Windsor that he had a bad back and that he could not perform heavy lifting, but he was assigned to heavy lifting. (Exs. 3, p. 1; H, p. 16) Dr. Steinmann noted Lewis relayed he had bent over to hang metal on a hanger, he felt his spine pop, and he went down to the floor and was unable to get up. (Exs. 3, p. 1; H, p. 16)

Dr. Steinmann ordered x-rays, and the reviewing radiologist listed an impression of "[d]egenerative disc disease and spondylosis changes from C3-C6 as discussed above" and "[s]light retrolisthesis of C4 on C5 and C5 on C6 and there is a very subtle convex curvature of the upper thoracic spine to the right." (Ex. 5, p. 1) After examining Lewis, Dr. Steinmann assessed him with a neck sprain and a thoracic sprain. (Ex. 3, p. 2)

On April 25, 2014, Mallaney received a facsimile with a physician's note indicating Lewis would be attending an appointment on April 30, 2014, and it was anticipated he would be able to return to work. (Ex. 11, p. 1) The note imposed restrictions of no lifting over twenty-five pounds, and no overhead lifting. (Ex. 11, p. 1)

Lewis returned to Dr. Steinmann on April 28, 2014, complaining of swelling in his left hand over the weekend and that he had shooting pain going up his elbow and tips of his fingers. (Exs. 3, p. 5; H, p. 20) Dr. Steinmann assessed Lewis with a paresthesia, a neck sprain, a thoracic sprain, and lumbago. (Exs. 3, p. 5; Ex. H, p. 20) Dr. Steinmann prescribed meloxicam, Skelaxin, and tramadol. (Exs. 3, p. 5; H, p. 20)

During his appointment with Dr. Steinmann on April 30, 2014, Lewis complained of popping and grinding in his right shoulder when lifting his arms up over his head. (Ex. H, p. 21)

On May 2, 2014, Dr. Steinmann ordered magnetic resonance imaging of Lewis's cervical spine. (Ex. 5, p. 2) Dr. Steinmann issued a note stating "Joseph has significant neck and upper back injury and should be able to do light duty work as long as he is able to change up his activity to vary the stress to his neck and upper back." (Ex. 3, p. 8) During his appointment on May 7, 2014, Dr. Steinmann wrote Lewis "does not feel this is [a workers' compensation] case." (Exs. 3, p. 10; H, p. 24) Dr. Steinmann issued a note advising Lewis to stop work until he could obtain pain and surgical consultations. (Ex. 3, p. 11)

Windsor and Twin City sent Lewis to Daniel Miller, D.O., an occupational medicine physician, for treatment. (Exs. 6; J) During his initial appointment on May 8, 2014, Dr. Miller documented Lewis told him he was injured on April 22, 2014 when "he was returned to the line hanging metal (approx. 350-pounds), leaned forward, the back popped, the metal in his hand pulled him forward to the ground to his knees, smashing the L hand under the metal and the R hand caught him from hitting his face on the ground." (Exs. 6, p. 2; J, p. 1)

Dr. Miller examined Lewis and assessed him with a neck and thoracic back sprain/strain, a shoulder, upper arm sprain/strain, and a lumbar sprain. (Exs. 6, pp. 3-4; J, pp. 2-3) Dr. Miller documented, "DDD C-spine and possible S/S related to that (N/T, weakness upper extremities) NOT WORK RELATED. Therefore, appointments with Dr. Pollack and Dr. Hatfield should be under private insurance." (Exs. 6, p. 4; J, p. 3) Dr. Miller imposed restrictions of no lifting over ten pounds, no pushing and pulling over twenty-five pounds, and no overhead work, and recommended Lewis continue with physical therapy. (Ex. 6, p. 1)

On May 9, 2014, Jubell prepared a hand-written statement, noting at the time of the incident he and Lewis were hanging five pieces of casement frame and Lewis

> bent over at his waist with straight legs (not squatting) to hang the first piece on the bottom hook. He yelled out and reached one hand towards his lower back. He slowly went down to the ground on his knees over the rubber mat. He let the four other pieces go that were in his other hand. He put his face and shoulder against the ground. I went and got Jay and told everyone not to move him until someone who was certified in first aid could come check on him. Later we asked him if he wanted to move. Some time passed by and then he decided to move to the cart with Ryan's assistance.

(Ex. V, p. 10)

Jubell testified at the time of the incident he and Lewis were hanging door frame casements together. (Tr., p. 120) Jubell noted that the workers would grab six of the sixteen foot casements together at a time, sharing the weight, and each casement weighed between eight and twelve pounds. (Tr., pp. 119-20, 126-27) Jubell reported the workers cradled the casements in their arms and faced the line to put the items on

the hangers, in unison, shuffling their feet as they moved. (Tr., pp. 118-20, 125-26) Jubell relayed the line moves at a slow pace or "snail's pace." (Tr., pp. 119, 126)

Jubell testified that at the time of the incident:

> Well, as we were hanging them, I noticed – you know when the other guy hasn't hung his because, you know, the height that you're at and you can kind of fell it in your arms. And I turned and looked, and he was reached back with one of his hands to his back. And he was standing straight, almost straight-legged with the weight down with the rest of – what he had in his hand down really low.
>
> And I obviously – he ended up – it looked like he slowly dropped them out of the crook of his arm and he had fell to the ground. There was a rubber mat that's running the whole length, and he fell to that mat with his elbow or forearm. And then he rolled forward, and his shoulder and his face went to the ground.
>
> And the parts did probably bang him up a little bit, I'm assuming, over here on his arm and on his leg a little bit. I know he kind of fell on them which probably didn't feel very good.

(Tr., p. 128)

Jubell denied Lewis was holding 350 pounds of metal at the time of the incident, and reported Lewis was not jerked to the floor by heavy weight. (Tr., p. 129) Jubell testified he did not observe Lewis jerk or flip back his neck or observe a whiplash motion. (Tr., p. 130) Jubell reported one of Lewis's arms was almost to the ground and "[h]is elbow, like, hit first, and then it was the initial shock. And then he rolled onto his shoulder and his face were like just touched the mat. I imagine maybe a little bit harder than a touch, you know. He rolled up onto his shoulder." (Tr., p. 130) Jubell noted Lewis dropped the pieces and reached for his back. (Tr., pp. 131-32)

During the hearing Lewis admitted he was not holding 350 pounds of metal at the time of the incident, as follows,

> Q Can you explain to us, were the parts that you were holding and that – when you felt the pop in your back, were those 350 pounds or do you know?
>
> A There's no way I can know how much they weigh. No, I didn't know.
>
> Q So why did you say that you were – he was returned to the line hanging metal, approximately 350 pounds leaning forward and his back popped? I mean, how did he get the 350 pounds?

A I said that. I was just making a guess.

Q And why did you guess that amount of weight?

A Because it was heavy and I had no idea of how much it weighed. And through the course of working on that line, we would grab large bundles. Even if it wasn't the material that I was hurt with, we would still grab large bundles and set them on the paint line for the hangers, for two or three rows of hangers. We didn't grab hangers for just one. We didn't grab enough pieces for one hanger. We grabbed a bundle so we could hang it real fast because the paint line is steady moving. We had to grab as much as we could possibly carry and then hang them. So when that hanger goes into the pain room, the next hanger load will pull up, we'd have a load in our arms, get right at hanging them. Once that's full, it would go on. We still have more. That's how we kept up.

Q So when this injury occurred, it wasn't a matter of 350 pounds falling on you or pulling you to the ground. Is that what happened?

A No, I wouldn't say pulled me to the ground. Once my back popped, I lost all strength in my legs and I fell and in my back.

(Tr., pp. 46-47)

Windsor created a video reenacting the incident around the time Jubell issued his statement. (Tr., p. 124) Jubell testified he reenacted the incident for Windsor when the incident was "fresh in [his] mind." (Tr., pp. 117; 124) Lewis testified the recreation differed from April 22, 2014 because:

> We were trained to face each other because the assembly line was always moving. So we had to be able to walk and hang at the same time. So the way he's facing is not the correct way. I never faced the hangers and hanged. I would always face – we'd always face each other. Like the guy at the other end, the way he's facing Clint so he can have his free arm. When I was in that position where Clint is at, I would hold – I held the material with my left hand, and we were facing each other. And I was able to take it off – one piece at a time off this stack and hang it with my right arm so we are were facing each other.

(Tr., pp. 39-40) Jubell denied he and Lewis were standing with their sides to the rack and twisting to hang the casements. (Tr., pp. 127-28) Jubell acknowledged the paint line involved a lot of bending and squatting, but reported it did not involve much twisting. (Tr., p. 121-122)

Lewis testified Jubell did not correctly depict how he fell, and reported "the material was still in my left hand, and I hit the ground with my left forearm and my knees and I caught my face – his right arm is down. When my face was almost to the ground when I threw my hand up and caught it. So I was almost face flat on the ground." (Tr., p. 41) Lewis also denied the line moves at a snail's pace because "[i]t's not efficient work." (Tr., p. 135) Crivaro, the division director of human resources for Windsor testified the line moves slow, and never at a fast pace. (Tr., pp. 137, 151)

Jubell testified that two or three weeks after the incident Lewis came up to him and asked him if he would vouch for his side of the story. (Tr., pp. 131-32) Jubell reported he did not know what he was asking, and responded "I just was going to tell the story how I seen it." (Tr., p. 132) Lewis denied that he asked Jubell to vouch for him. (Tr., p. 135) Lewis reported Jubell told him that he heard Mallaney tell Rienstra Lewis was not supposed to be working on the paint line, and he asked Jubell to tell his attorney that and Jubell replied he did not know if he would. (Tr., pp. 135-136)

Jubell worked for Windsor from March 31, 2014 through June 23, 2014. (Tr., p. 115) Jubell testified he left Windsor for a better paying salaried supervisor position with Bridgestone. (Tr., p. 134) Jubell reported he is not friends with or socialize with any of the employees of Windsor. (Tr., p. 134)

On May 12, 2014, Dr. Steinmann issued a note stating Lewis could return to work with restrictions of no lifting over ten pounds, no pushing or pulling over twenty-five pounds, no overhead work, and to avoid repetitive activity to allow changes in posture and muscle use to avoid re-injury. (Ex. 3, p. 12)

Lewis attended an appointment with Kenneth Pollack, M.D., an anesthesiologist, on May 22, 2014. (Exs. 7, p. 1; F, p. 9) Dr. Pollack examined Lewis and reviewed magnetic resonance imaging from May 2, 2014. (Ex. 7, pp. 2-3) Dr. Pollack listed an impression of "C5-6 disc protrusion resulting in spinal cord compression and myelomalacia. Physical findings are consistent with early myelopathy." (Ex. 7, p. 3) Dr. Pollack recommended a prompt surgical evaluation and noted, "I am concerned that undue delay will lead to further deterioration of spinal cord function and progression of his myelopathy." (Ex. 7, p. 3)

Lewis returned to Dr. Miller on May 21, 2014, complaining of shooting pain from his neck, down his spine and arms and in his low back shooting down through his buttock and into his bilateral lower extremities. (Exs. 6, p. 8; J, p. 4) Lewis reported he had been placed on light duty and his employer had him use a spade to remove dandelions, which hurt him, and then moved him to sweeping. (Exs. 6, p. 8; J, p. 4) Lewis also complained of pain in his knee caps and Dr. Miller documented he told him he was only authorized to treat is back. (Ex. 6, p. 8; J, p. 4)

On May 28, 2014, David Hatfield, M.D., an orthopedic surgeon, examined Lewis and reviewed his imaging results. (Exs. 7, p. 4; F, p. 10) Lewis prepared a new patient history form with a physician's assistant from Dr. Hatfield's office, which documented he was injured during a fall on April 22, 2014 where "350# of steel came down in front of him – broke the fall of steel [with] arms – low back popped, neck snapped backwards." (Exs. 7, p. 6; F, p. 12) The physician assistant documented she reviewed the history form with Lewis. (Exs. 7, p. 11; F, p. 16)

Dr. Hatfield examined Lewis, and noted Lewis had slight unsteadiness with Romberg testing, diffuse weakness in the left upper extremity, and the imaging showed degenerative changes with a component of neural compression at C4-5 and C5-6, with a lesser extent at C3-4. (Exs. 7, p. 5; F, p. 11) Dr. Hatfield found Lewis did not have emergent frank myelopathy, started oral steroids, and imposed a ten pound lifting restriction with no overhead work, no ladders, and no repeated bending and twisting of the head and neck. (Exs. 7, pp. 5, 12; F, p. 11)

Following his appointment on June 4, 2014, Dr. Miller diagnosed Lewis with a cervical, thoracic, and shoulder, and lumbar strain with left hand pain. (Ex. 6, p. 11; J, p. 7) Dr. Miller imposed restrictions of no lifting over ten pounds, no pushing/pulling over twenty-five pounds, avoid repetitive bending/twisting, and no overhead work. (Exs. 6, p. 11; J, p. 7) Dr. Miller prescribed ibuprofen and Methocarbamol. (Exs. 6, p. 11; J, p. 7)

During an appointment on June 12, 2014, Dr. Steinmann assessed Lewis with cervical spondylosis with myelopathy, and prescribed cyclobenzaprine, meloxicam, oxycodone-acetaminophen, prednisone, and tramadol. (Ex. 3, p. 14) Dr. Steinmann imposed restrictions of no lifting above ten pounds, no overhead work, no repetitive bending or twisting of the head and neck, and to work in a seated position. (Ex. 3, p. 17)

Lewis provided Windsor with Dr. Steinmann's restrictions and family medical leave paperwork. (Ex. O, p. 1) On July 9, 2014, Windsor granted Lewis short-term disability benefits and informed him that he would need to report to work the week of September 15, 2014, with a certification from his physician that he was fit to return to work. (Ex. O, p. 1)

Dr. Miller ordered magnetic resonance imaging of Lewis's lumbar spine and right shoulder, which was conducted on August 22, 2014. (Exs. 4; I, p. 1) With respect to the lumbar spine, the reviewing radiologist listed an impression of "[a]t L4-L5, there is mild central disc bulge with annular tear. There is disc desiccation at the L3-L4 and L4-5 disc levels." (Exs. 4, p. 1; I, p. 2) With respect to the right shoulder, the reviewing radiologist listed an impression of "[s]upraspinatus and infraspinatus tendinopathy. There are small partial-thickness articular surface tear of the suprapinatus tendon. There is no full-thickness tear or muscle atrophy." (Ex. I, p. 1)

Dr. Miller ordered magnetic resonance imaging of Lewis's cervical spine, which was conducted on October 2, 2015. (Ex. 4, p. 3) The reviewing radiologist listed an impression of "[m]ultilevel spondylitic changes, as described above with reversal of the normal lordosis centered at C3/4. Mild to moderate degrees of canal stenosis spanning the C3-4 through C6-C7 levels" and noted "[a]dditional varying degrees of significant foraminal stenosis, as detailed above." (Ex. 4, p. 4)

On September 1, 2014, Mallaney spoke with Lewis and requested additional documentation concerning his restrictions and health condition. (Ex. Q, p. 1) Lewis's short-term disability benefits through Windsor ended on September 12, 2014. (Ex. Q, p. 1) On September 29, 2014, Mallaney sent Lewis a letter stating she had not received the requested documentation, and that as of September 30, 2014, he would be terminated for failing to return to work following short-term disability. (Ex. Q, p. 1) Lewis did not return to work.

On November 12, 2014, Lewis attended an appointment with Mark Kirkland, D.O., an orthopedic surgeon. (Ex. 1, p. 1) Lewis complained of right shoulder pain with popping, neck pain, and reported his shoulder pain wakes him up at night. (Ex. 1, p. 2) Dr. Kirkland examined Lewis and took x-rays. (Ex. 1, pp. 2-3) Dr. Kirkland listed an impression of right shoulder internal derangement/osteoarthritis of the right acromiclavicular joint, right levator scapulae muscle strain, status post right shoulder arthroscopic surgery with possible rotator cuff repair, rule out right rotator cuff tear, and cervical spine multilevel degenerative changes. (Ex. 1, p. 3) Dr. Kirkland opined "the diagnosis above is related to the injury event that happened on or about April 22, 2014. This applies to the right acromioclavicular joint, the levator scapulae strain, and possible tear of the rotator cuff." (Ex. 1, p. 3) Dr. Kirkland found that Lewis' current restrictions were appropriate. (Ex. 1, p. 4)

Lewis returned to Dr. Kirkland on November 19, 2014. (Ex. C) Dr. Kirkland reviewed the magnetic resonance imaging results with Lewis and noted "I did not see any evidence for any suture anchors consistent with rotator cuff repair. He may have had just a debridement of a partial rotator cuff tear with his previous surgery." (Ex. C, p. 2) Dr. Kirkland documented, "[i]t is my opinion in regard to today's history, complaints of symptoms, and physical examination that there are inconsistencies." (Ex. C, p. 2)

Lewis received left knee magnetic resonance imaging on December 16, 2014. (Ex. 8, p. 2) The reviewing radiologist listed an impression of "[t]ricompartmental chondromalacia most marked within the patellofemoral compartment" and a small joint effusion. (Ex. 8, p. 3)

Lewis underwent a bone scan on January 22, 2015, following complaints of left hand pain. (Ex. K, p. 55) The physician who administered the test opined there was no evidence to suggest a finding of complex regional pain syndrome. (Ex. K, p. 55)

Sunil Bansal, M.D., performed an independent medical examination of Lewis on July 10, 2015. (Ex. 9, p. 5) Dr. Bansal examined Lewis and reviewed his medical records. (Ex. 9, pp. 1-5) Dr. Bansal diagnosed Lewis with "[a]ggravation of multi-level cervical spondylosis, with C4-C5 disc protrusion," L4-L5 central disc bulge with an annular tear, and a right rotator cuff tear. (Ex. 9, pp. 22-24, 27-28).

With respect to causation, Dr. Bansal opined Lewis "aggravated his cervical spondylosis from the impact of falling forward on April 22, 2014. Furthermore, Mr. Lewis' constellation of left shoulder, neck, trapezius, and shoulder blade pain is related to a cervical discogenic problem." (Ex. 9, p. 23) Dr. Bansal documented Lewis "was not complaining of radicular neck pain prior to starting work at Windsor Windows. Therefore, based on mechanistic and temporal standpoints, the work at Windsor Windows was a significant contributing factor for his multi-level cervical disc pathology." (Ex. 9, p. 24)

Dr. Bansal further opined "the mechanism of lifting the heavy steel and feeling a pop in the back is consistent with his diagnosis of L4-L5 central disc bulge with annual tear," and his work for Windsor was a substantial causal, contributing, or aggravating factor in bringing about his shoulder condition because Lewis "fell onto an outstretched right hand. This mechanism is pathognomonic for a rotator cuff tear." (Ex. 9, pp. 25, 28) Dr. Bansal noted following the 2010 motor vehicle accident Dr. Adams released Lewis in January 2011, "stating there was no deficit in range of motion of the right shoulder compared to the opposite side," and Lewis was not experiencing shoulder discomfort before the work injury. (Ex. 9, p. 28) Dr. Bansal did not find Lewis sustained permanent impairments to his legs or left hand as a result of the work injury. (Ex. 9, pp. 27-29)

Using Table 15-5, of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Bansal found "[h]e meets several criteria from [DRE Cervical] Category II, including radiculopathic complaints, guarding, loss of range of motion, and considerable pain. He also has loss of relevant reflexes and strength from an active C4-C5 disc protrusion," and assigned a seven percent whole person impairment. (Ex. 9, p. 22) Using Table 15-3 of the AMA Guides, Dr. Bansal found Lewis meets the criteria for a DRE Category III impairment, noting "[h]e has an L4-L5 central disc bulge with annular tear. He has clinically corresponding radiculopathy. He has continued pain," and assigned a ten percent whole person impairment. Using Figures 16-40 through 16-46, and comparing the right shoulder with the left shoulder Dr. Bansal opined Lewis sustained a three percent upper extremity impairment, or two percent impairment to the body as a whole. (Ex. 9, pp. 25, 28) Dr. Bansal recommended lifting restrictions of five pounds above shoulder level with the right arm occasionally, twenty pounds occasionally, ten pounds frequently, and restrictions of no frequent bending, squatting, climbing, or twisting, and "to avoid work or activities that require repeated neck motion, or that place his neck in a posturally flexed position for any appreciable duration of time (greater than 15 minutes)." (Ex. 9, pp. 24-26, 29)

On August 13, 2015, Dr. Miller sent a letter to counsel for Windsor and Twin City, stating he had reviewed a video reenactment of the alleged incident, and,

> Based upon my evaluation treatment, Review [sic] of the medical records and my review of the reenactment video it is my opinion that the only injury that will resolved [sic] from instantly described April 2014 while at work would be an acute lumbar back strain. This most certainly should have resolved by now. I do not believe that Mister Lewis has any permanent impairment or need for any permanent restrictions as result of any injury from that incident. This would include any impairment to the lumbar back, neck, or left hand issues.
>
> It has been documented that Mr. Lewis has previous lumbar and cervical degenerative disc disease and chronic pain in these areas. If the reenactment of the work incident is accurate, I would not expect this to cause an aggravation or worsening of his pre-existing conditions. It also appears, that the work incident did not cause any trauma to his left hand. Also, other than pain with palpation, no abnormality was seen on physical examination of the left hand.

(Ex. J, p. 18)

In response to an inquiry from the defendants, on August 13, 2015, Dr. Kirkland sent a letter to counsel for Windsor and Twin City noting Dr. Miller's original encounter from May 8, 2014, notes "[o]n April 22, 2014, he was returned to the line hanging metal (approximately 350 pounds), leaned forward, and the back popped. The metal in his hand pulled him forward to the ground to his knees smashing the left hand under the metal and the right hand caught him from hitting his face on the ground." (Ex. C, p. 3) Dr. Kirkland reviewed a reenactment video of the incident, and noted "[t]his certainly is not 350 pounds. It appears to be the 30 pound as you brought to my attention." (Ex. C, p. 3)

Dr. Kirkland opined after reviewing the reenactment multiple times, "the incident on or about April 22, 2014 was not significant to cause Mr. Lewis's alleged problems. Getting in and out of the car would be more stressful to a person than the mechanism of injury that I have seen on the reenactment disc." (Ex. C, p. 3) Dr. Kirkland opined Lewis does not have a permanent impairment as a result of the injury that occurred on or about April 22, 2014, and that he is not in need of permanent restrictions from that injury. (Ex. C, p. 4)

On October 12, 2015, Lewis attended an appointment with Daniel McGuire, M.D., an orthopedic surgeon. (Exs. 8, p. 5; K, p. 56) Dr. McGuire examined Lewis and reviewed his imaging results from May and October 2015. (Exs. 8, p. 5; K, p. 56) Dr. McGuire opined he did not believe surgery would dramatically help Lewis and that he may not be able to engage in heavy manual labor. (Exs. 8, p. 5; K, p. 56)

Dr. McGuire sent a letter to counsel for Windsor and Twin City on February 8, 2016, in response to an inquiry he received. (Ex. N, p. 1) The letter provided:

> Enclosed you will see my records from Broadlawns. I am not sure you had the dictated note that I produced on October 12, 2015. The February 20, 2015, note seems incomplete. There is a note from October 9, 2015, and then the separately dictated note.
>
> There is minimal mention of low back problems. Two different places that responds to Work Comp is "no."
>
> On one visit, Mr. Lewis did briefly mention that there was a work incident. We did not elaborate.
>
> I did see an MRI from 2014, and he ended up with an MRI probably at Iowa Radiology in October 2015. Correct, there has been no significant progression over time. Perhaps the MRI findings seen in 2014 and 2015 are essentially "normal" for Mr. Lewis. We do know as people reach 40 and 50 that they develop aging changes or spondylosis as a normal part of life.
>
> It does appear that he had some longstanding issues. The work incident from April 22, 2014, did not cause the lumbar spondylosis or cervical spondylosis that has been noted. Short term, it may have caused a little additional symptoms but he has had symptoms for a number of years. The work incident did not cause any objective change in the overall situation of Mr. Lewis.
>
> I would not assign any additional impairment as I understand the clinical situation. Given what we see on his MRI I would suggest restrictions. I am not sure the extent of his restrictions in 2013 or 2014.

(Ex. N, p. 1)

Lewis returned to Dr. McGuire on August 26, 2016, complaining of pain. (Exs. 8, p. 6; K, p. 57) Dr. McGuire assessed Lewis with cervical spondylosis with myelopathy and opined he did not believe surgery would be beneficial. (Exs. 8, p. 8; K, p. 59)

CONCLUSIONS OF LAW

I. Arising Out of and in the Course of Employment

Lewis alleges he sustained injuries to his neck, thoracic, and lumbar spine, knees, right shoulder, and both hands and arms as a result of the April 2014 work injury. Windsor and Twin City aver Lewis has failed to establish he sustained an injury arising out of and in the course of his employment with Windsor and contend Lewis "feigned an incident" to get out of working on the paint line.

Under Iowa Code section 85.3(1),

> Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.

To receive workers' compensation benefits, a claimant must establish by a preponderance of the evidence that the injury arose out of an in the course of the claimant's employment. Coffey v. Mid Seven Transp. Co., 831 N.W.2d 81, 93 (Iowa 2013); Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253-54 (Iowa 2010). An injury "arises out of" the claimant's employment when a causal relationship exists between the claimant's employment and the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 129 (Iowa 1995). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). "In the course of" the claimant's employment "refers to the time, place, and circumstances of the injury." Id. "An injury occurs in the course of employment when it is within the period of employment at a place where the employee reasonably may be engaged in doing something incidental thereto." Great Rivers Med. Ctr. v. Vickers, 753 N.W.2d 570, 574 (Iowa 2008).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, [i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant has a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> [A] disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Windsor and Twin City contend Lewis's testimony concerning his work injury and alleged resulting impairment is not credible. Lewis avers the testimony of Jubell and Crivaro is inaccurate and the reenactment is inaccurate. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990).

Lewis testified on direct examination he has a history of criminal convictions, including minor theft. (Tr., p. 9) Theft is a crime of dishonesty. State v. Dudley, 856 N.W.2d 668, 680 (Iowa 2014).

Lewis has a financial interest in the outcome of this case. Crivaro continues to work for Windsor, and as an employee of the company, he has an interest in the outcome of this case. Jubell does not currently work for Windsor, or socialize with any of Windsor's employees. I do not find he has an interest in the outcome of this case. I did not observe Crivaro or Jubell engage in any furtive or suspicious movements during the hearing. Their memories were clear, they maintained appropriate eye contact, and their rate of speech was normal. Jubell's testimony at hearing was consistent with his original statement in 2014. (Ex. V, p. 10; Tr., p. 128) I do not find Lewis's testimony credible. Lewis's memory was not clear, he made inconsistent statements, and I observed him engage in furtive movements during the hearing.

During his initial appointment with Dr. Miller on May 8, 2013, Lewis told Dr. Miller he was lifting 350 pounds at the time of his injury, and Dr. Miller documented "he was returned to the line hanging metal (approx. 350-pounds), leaned forward, the back popped, the metal in his hand pulled him forward to the ground to his knees, smashing the L hand under the metal and the R hand caught him from hitting his face on the ground." (Exs. 6, p. 2; J, p. 1)

Dr. Hatfield's physician assistant further documented Lewis reported "350# of steel came down in front of him – broke the fall of steel [with] arms – low back popped, neck snapped backwards." (Exs. 7, p. 6; F, p. 12) The physician assistant documented she reviewed the above history with Lewis. (Exs. 7, p. 11; F, p. 16)

Lewis was not lifting 350 pounds at the time of the incident. Jubell denied Lewis was carrying 350 pounds at the time of the incident. (Tr., p. 129) Jubell testified the workers would grab six casements, weighting eight to twelve pounds each and shared the weight. (Tr., pp. 119-20, 126-27) Assuming the casements weighed twelve pounds each, the total weight shared by Lewis and Jubell would have been seventy-two pounds. When questioned at hearing regarding his statement to Dr. Miller, Lewis testified, "I was just making a guess" and he guessed that amount "[b]ecause it was heavy and I had no idea of how much it weighed." (Tr., p. 46)

Jubell testified at the time of the incident,

> I noticed – you know when the other guy hasn't hung his because, you know, the height that you're at and you can kind of fell [sic] it in your arms. And I turned and looked, and he was reached back with one of his hands to his back. And he was standing straight, almost straight-legged with the weight down with the rest of – what he had in his hand down really low.
>
> And I obviously – he ended up – it looked like he slowly dropped them out of the crook of his arm and he fell to the ground. There was a rubber mat that's running the whole length, and he fell to that mat with his elbow or forearm. And then he rolled forward, and his shoulder and his face went to the ground.
>
> And the parts did probably bang him up a little bit, I'm assuming, over here on his arm and on his leg a little bit. I know he kind of fell on them which probably didn't feel very good.

(Tr., p. 128) Jubell testified he did not observe Lewis jerked to the floor by the weight, flip back his neck, or observe a whiplash motion. (Tr., pp. 129-30) During the hearing Lewis acknowledged the weight did not fall on him or pull him to the ground, and he relayed, "[n]o, I wouldn't say pulled me to the ground. Once my back popped, I lost all strength in my legs and I fell and in my back." (Tr., p. 47)

Jubell testified the workers would cradle the casements in their arms and face the line to put the items on the hangers, in unison, shuffling their feet as the moved. (Tr., pp. 118-20, 125-26) Jubell relayed the line moves at a slow pace or "snail's pace" and the workers had to shuffle their feet. (Tr., pp. 119, 126) Lewis reported, "[w]e were trained to face each other because the assembly line was always moving. So we had to be able to walk and hang at the same time. So the way he's facing is not the correct way. I never faced the hangers and hanged. I would always face – we'd face each other." (Tr., p. 39) Lewis also denied the line moves at a snail's pace because

"[i]t's not efficient work." (Tr., p. 135) Lewis's testimony directly contradicts Jubell's testimony. (Tr., pp. 39-40) Crivaro also testified the line moves slow and never at a fast pace. (Tr., pp. 137, 151) I do not find Lewis's testimony credible.

Lewis's memory concerning a prior workers' compensation claim was also flawed. Lewis testified he developed bilateral carpal tunnel syndrome while working for Glacier Properties, he received workers' compensation and surgery on one hand, and he left his employment with Glacier Properties. (Tr., pp. 83-84) Lewis's medical records document he was diagnosed with carpal tunnel syndrome, and he received workers' compensation benefits while working for Town Square Apartments. (Ex. F, pp. 2-6)

Lewis testified before he worked for Windsor he developed carpal tunnel while working for another employer, but reported he had no other workplace injuries to his neck, back, or feet. (Tr., p. 20) This is also inconsistent with his medical records. In June 2001, Lewis sought medical care and reported he was injured at work when a steel beam fell on his lower extremities while he was holding a 300 pound drywall sheet. (Ex. K, p. 6) Lewis complained of pain from his neck down, popping in his neck with movement, sharp pain with "some distal radiation and numbness," right shoulder pain, and knee and lumbar pain with prolonged sitting. (Ex. K, pp. 3-12)

Lewis testified that at the time Windsor hired him he had not worked for a few years, and had been performing odd jobs, including mowing lawns and cutting shrubs. (Tr., p. 13) Lewis testified that when Windsor hired him he did not disclose any of his prior physical problems because he was fine. (Tr., p. 85) Lewis's medical records reveal a long history of physical problems. I do not find his testimony credible.

Only one physician, Dr. Bansal, a physician specializing in occupational medicine retained to perform an independent medical examination, has opined Lewis has sustained permanent injuries to his right shoulder, cervical spine, and lumbar spine caused by and/or aggravated by the April 22, 2014 incident. Dr. Miller, the treating occupational medicine physician, and Dr. Kirkland, the treating orthopedic surgeon, opined Lewis did not sustain permanent impairments to his right shoulder, cervical spine, and lumbar spine caused by the incident on April 22, 2014.

Dr. Kirkland initially believed Lewis's right shoulder condition "is related to the injury event that happened on or about April 22, 2014." (Ex. 1, p. 3) Later, after he reviewed magnetic resonance imaging, and treated Lewis, Dr. Kirkland documented, "[i]t is my opinion in regard to today's history, complaints of symptoms, and physical examination that there are inconsistencies." (Ex. C, p. 2)

I do not find Dr. Bansal's opinion persuasive. It is based on an inaccurate history. Dr. Bansal opined "the mechanism of lifting the heavy steel and feeling a pop in the back is consistent with his diagnosis of L4-L5 central disc bulge with annual tear." (Ex. 9, p. 25) As analyzed above, Lewis was not lifting heavy steel at the time of the

incident. He and Jubell were jointly carrying six aluminum casements weighing a maximum total of seventy-two pounds.

Dr. Bansal also found Lewis "was not complaining of radicular neck pain prior to starting work at Windsor Windows." (Ex. 9, p. 24) Lewis's medical records reveal complaints of pain from the neck down, popping in his neck with movement, and sharp pain with "some distal radiation and numbness" in 2001 and "radiating neck pain he rated a ten out of ten" in 2002. (Ex. K, pp. 3-12, 27) I do not find Lewis's testimony credible regarding the nature of his injury. I do not find Dr. Bansal's opinion persuasive. Lewis has not met his burden of proof in this case that he sustained an injury arising out of and in the course of his employment with Windsor.

II. Independent Medical Examination

Lewis seeks to recover the $375.00 cost of Dr. Bansal's medical examination, and the $3,320.00 cost of his report. Neither party addressed the issue of the independent medical examination and report in their post-hearing briefs.

After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choosing." Id. Dr. Bansal performed an independent medical examination of Lewis on July 10, 2015. (Ex. 9, p. 5) At that time no physician had provided an impairment rating concerning Lewis's work injury. Under the statute, Lewis is not entitled to recover the cost of the examination.

Rule 876 IAC 4.33 outlines the costs that can be taxed, as follows,

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The rule expressly allows for the recovery of the cost of two reports. Lewis has not prevailed on the merits of his claim. Costs should not be assessed to the defendants.

ORDER

IT IS THEREFORE ORDERED, that:

The claimant shall take nothing in this case.

The parties shall pay their own costs.

Signed and filed this 24th day of March, 2017.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.