

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

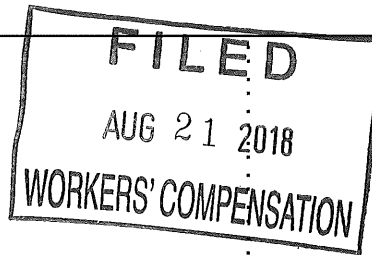
HATA NUHANOVIC,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendants.



File No. 5058552

ARBITRATION
DECISION

Head Note Nos.: 1402.30; 1402.40; 1701;
1803; 1803.1; 1804; 2204; 2206;
2209; 2501; 4100

Claimant Hata Nuhanovic filed a petition in arbitration on March 7, 2017, alleging she sustained injuries to her neck, bilateral shoulders, bilateral arms, hands, wrists, lower back, left leg, left heel, and chronic myofascial pain syndrome and a mental/psychological injury while working for the defendant, Tyson Fresh Meats, Inc. ("Tyson"), on April 7, 2015. Tyson filed an answer on April 4, 2017, denying Nuhanovic sustained a work injury on April 7, 2015, acknowledging Nuhanovic reported symptoms of carpal tunnel syndrome on March 25, 2014 and July 18, 2016, and stating her carpal tunnel syndrome claims have been accepted, but denying all other claims.

An arbitration hearing was held on March 15, 2018, at Iowa Workforce Development, in Waterloo, Iowa. Attorney J. Richard Johnson represented Nuhanovic. Nuhanovic appeared and testified. Karmela Lofthus provided Bosnian interpretation services during the hearing. Attorney Jason Wiltfang represented Tyson. Robert Gordon, M.D., appeared and testified on behalf of Tyson. Joint Exhibits ("JE") 1 through 9, Exhibits 1 through 15, and 17, Exhibits A¹, B, and D through G, and I through O. The record was held open through June 4, 2018, for the receipt of Exhibit 16, a report from Dr. Knudson, and for the receipt of post-hearing briefs. Exhibit 16 and the briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Tyson waived all affirmative defenses.

STIPULATIONS

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

¹ The cover of Exhibit A was marked as Exhibit A, page one. The individual pages of the exhibit are not numbered, but contain sheet numbers. The sheet numbers will be referred to as the individual page numbers for Exhibit A.

2. Nuhanovic sustained an injury, carpal tunnel syndrome, on April 7, 2015, which arose out of and in the course of her employment with Tyson.

3. Although entitlement to benefits cannot be stipulated to, Nuhanovic was off work from March 11, 2017, and ongoing.

4. At the time of the alleged injury Nuhanovic's gross earnings were \$613.44 per week, she was married and entitled to two exemptions, and the parties believe the weekly rate is \$410.49.

5. Prior to the hearing Nuhanovic was paid 45.6 weeks of compensation at the rate of \$410.49 per week.

6. Tyson is entitled to a credit for group health benefits paid for all medical bills incurred and treatment referenced in Nuhanovic's medical expense summary.

7. Costs have been paid.

ISSUES

1. What is the nature of the injury?

2. Has Nuhanovic sustained a scheduled member disability to her bilateral upper extremities, or has she sustained an industrial disability?

3. Did the alleged injury cause a temporary disability during a period of recovery?

4. Is Nuhanovic entitled to a running award of healing period benefits?

6. If Nuhanovic has reached maximum medical improvement, what is the extent of disability?

7. If Nuhanovic has reached maximum medical improvement, what is the commencement date for permanency?

8. Is Nuhanovic entitled to recover payment for medical bills?

9. Is Nuhanovic entitled to alternate medical care under Iowa Code section 85.27?

10. Should costs be assessed against either party?

FINDINGS OF FACT

Nuhanovic was born in Bosnia and moved to the United States on January 21, 1998. (Transcript, page 12; Exhibit A, p. 3) Nuhanovic is unable to speak and write in English, but she is able to speak, write, and read in Bosnian. (Tr., pp. 11, 13)

Nuhanovic completed the eighth grade in Bosnia. (Tr., pp. 14-15; Ex A, p. 2) Nuhanovic has not received any additional training. (Tr., p. 15) Nuhanovic is right-hand dominant. (Tr., p. 48) Nuhanovic is not a smoker. (Tr., pp. 98-99) Nuhanovic was born in September 1960, and at the time of hearing was fifty-seven. (JE 1, p. 1)

While she was living in Bosnia, Nuhanovic was a homemaker. (Tr., p. 14; Ex A, p. 3) Tyson hired Nuhanovic in May 1998. (Tr., pp. 12-14; Ex. 11, p. 42) Nuhanovic has not worked for any other employer. (Tr., p. 14; Ex. A, p. 3) Nuhanovic passed a pre-employment physical with Tyson. (Ex. 5, p. 19; Tr., pp. 12-13) Nuhanovic last worked at Tyson on March 10, 2017. (Tr., p. 14)

At the time of her hiring, Nuhanovic packed loins into plastic bags, and after two months Tyson trained her to perform the trim jowls job. (Tr., p. 15; Ex. A, p. 3) Nuhanovic was still performing the trim jowls job at the time of her work injury. (Ex. A, p. 3) During her tenure at the plant Nuhanovic also performed other jobs when employees were absent, including the blender, where she poured meat into boxes, boxing, where she boxed meat, and bagging hams in plastic bags on a belt line. (Tr., pp. 15-16; Ex. A, p. 3) Nuhanovic also performed other jobs when she was placed on light duty. (Tr., pp. 28-29)

Prior to 2014, five people performed the trim jowls job. (Tr., pp. 22, 56, 62) Nuhanovic's department processed 10,000 jowls in eight hours. (Tr., pp. 61-62) Each jowl weighed approximately two pounds. (Tr., p. 56) Nuhanovic worked on a trimming table in front of a lower conveyor belt, both of which were just above waist height. (Tr., pp. 23-26) The jowls were frozen. (Tr., p. 25) Before she trimmed each jowl, Nuhanovic sharpened her knife and dipped it in boiling water, so the knife was clean and hot. (Tr., p. 25) After she was through trimming a jowl, Nuhanovic would throw the trimmed jowl onto an upper conveyor belt that took the trimmed jowls to the combo. (Tr., pp. 23, 55) Nuhanovic is five feet, five inches tall. (Tr., p. 24) The upper conveyor belt was higher than Nuhanovic's shoulder. (Tr., p. 24) Nuhanovic relayed she would throw the meat onto the upper conveyor with her left arm. (Tr., p. 56)

Nuhanovic testified in approximately 2014 or 2015, Tyson eliminated the upper conveyor belt. (Tr., pp. 21, 26) Now there is just one conveyor belt. (Tr., p. 27) Each trimming table has a hole the employee can drop the trimmings into and the employee slides the trimmed-up jowl onto the conveyor. (Tr., p. 27; Ex. A, p. 4) Nuhanovic reported the job is much easier now because the employees do not have to reach up and throw the trimmed-up piece on the upper conveyor and can slide each trimmed piece down onto the lower conveyor. (Tr., pp. 20, 27, 32) Nuhanovic admitted she worked under the new configuration without the upper conveyor belt for at least one year before her work injury. (Tr., p. 54) Exhibit O is a video of the trim jowls job under the current configuration and does not show the upper conveyor configuration.

Kirk Marvel with Tyson performed a job safety analysis of the trim jowls position on July 10, 2013, noting strain is a potential hazard from pulling the jowl from the conveyor to the table, inspecting the jowls, and placing defects down on the trim

conveyor, placing the jowl on the upper conveyor or lower conveyor with the non-knife hand, and throwing the jowl into the inedible barrel. (Ex. 9, pp. 35-36) Additional hazards included slipping, tripping, falling on wet and slippery surfaces, lacerations, and burns. (Ex. 9, pp. 34-36) Nuhanovic and her supervisor signed the job safety analysis on April 3, 2014. (Ex. 9) The job safety analysis documents the upper conveyor was still in use as of April 3, 2014, as follows: "[p]lace defects down on trim conveyor. Place jowl on upper conveyor or lower conveyor with your non-knife hand." (Ex. 9, p. 36)

Nuhanovic testified for the blender job, she grabbed a box, put it on a table, and pushed a green button that would dispense up to sixty pounds of meat. (Tr., pp. 32, 60) Nuhanovic then pushed over the box with both hands and another coworker would load it up. (Tr., pp. 32-33) Tyson did not originally have a conveyor for the blender position, but later added a conveyor after Nuhanovic's work injury. (Tr., pp. 33-34)

Hams arrived on a conveyor for the pack hams job. (Tr., p. 34) Nuhanovic worked next to a machine that would drop the ham into a metal box. (Tr., p. 35) Nuhanovic grabbed the ham and shoved the ham into the bag. (Tr., p. 35) Another conveyor took the ham away to finish the packaging process. (Tr., p. 35) Nuhanovic put one to two hams into each bag. (Tr., p. 35) Nuhanovic relayed she used both arms to bag the hams, but used her left arm more than her right arm. (Tr., p. 35) Tyson switched the workers so they would not work on the same side. (Tr., p. 35) After her surgery Nuhanovic did not perform the pack hams job or the blender job. (Tr., pp. 35, 59)

On April 29, 2014, Nuhanovic and a Tyson nurse attended an appointment with Thomas Gorsche, M.D., an orthopedic surgeon. (JE 1, p. 1) Dr. Gorsche reviewed Nuhanovic's nerve conduction studies, noting there was no evidence of cubital tunnel syndrome, but noted some minor evidence of bilateral carpal tunnel syndrome. (JE 1, p. 1) Dr. Gorsche listed an impression of left shoulder subacromial bursitis with improvement, and subjective complaints of left fifth finger paresthesias that were improving. (JE 1, p. 1) Dr. Gorsche noted Nuhanovic's left shoulder was forty percent better, physical therapy was helping, and she was performing light duty work. (JE 1, p. 1) Dr. Gorsche continued Nuhanovic's physical therapy, ordered light duty work, and to ice her left shoulder once per shift. (JE 1, p. 1) Nuhanovic testified when she saw Dr. Gorsche in April 2014 for left wrist and left arm/shoulder pain she was sliding the trimmings and no longer using the upper conveyor. (Tr., p. 58)

Nuhanovic returned to Dr. Gorsche on May 13, 2014, complaining of some numbness and tingling in her ulnar digits in the morning, and discomfort in her shoulder. (JE 1, p. 2) Dr. Gorsche found Nuhanovic was at maximum medical improvement, and opined she had not sustained a permanent impairment. (JE 1, pp. 2-3)

On August 11, 2014, Nuhanovic informed Tyson she started feeling pain in her left heel on July 21, 2014, while performing the trim jowls job. (Ex. 7, p. 1) Tyson had offered Nuhanovic a rubber mat to stand on. (Tr., pp. 30-31) Nuhanovic relayed her nursing staff told her to see her personal physician regarding her heel pain. (Tr., p. 30)

On August 5, 2014, Nuhanovic attended an appointment with Ronald Kane, DPM, with Wheaton Franciscan Healthcare, complaining of left ankle pain for several weeks, with an inability to bear weight, with some pain and swelling. (JE 2, p. 19) Dr. Kane examined Nuhanovic and assessed her with Achilles tendinitis. (JE 2, p. 20)

Dr. Gordon is an occupational medicine physician who provides on-site physician services for Tyson to its employees. (Tr., pp. 77-79) Dr. Gordon has worked with Tyson since 2010. (Tr., pp. 89-90) On September 10, 2014, Dr. Gordon examined Nuhanovic. (Tr., p. 94) Dr. Gordon noted Nuhanovic had seen her primary care provider and Dr. Kane for left posterior foot pain. (JE 3, p. 1) Nuhanovic relayed she was doing well, and Dr. Gordon discharged her from care with a zero percent impairment rating. (JE 3, pp. 1-2) Dr. Gordon testified he had not received any information Nuhanovic had received treatment for her back, left shoulder, left leg, right wrist or arm, or left wrist or arm before her visit with him on September 10, 2014. (Tr., pp. 94, 96-98)

On April 7, 2015, Nuhanovic reported a work injury to Tyson. (Exs. 6; 7) The accident investigation report provides:

[t]eam member had sudden pain in left lower back and left leg. Team member trims jowls on the edible conveyor belt. She has done this job for many years and has had problems with her left lower back and left leg before. She stated she leans to her left to grab and slide the jowl over to her workstation to trim it. She said she sweeps the trimmed pieces with skin on them into the hole in her worktable and pushes the trimmed jowl back on to the conveyor belt. Team member stands on one inch ergo stand while she trims. Team member has stated in the past that standing on the cement floor hurts her back. She has been told to go to the Supply Window and check out a rubber mat to stand on but she refused to do it and chooses to stand on the one inch tall ergo stand. . . .

(Ex. 6, p. 20)

On April 14, 2015, Nuhanovic reported to Tyson on April 13, 2015 she was "[p]icking jowls from belt and placing it onto the combo. Suddenly felt shooting pain in neck and shoulder (left)." (Ex. 7, p. 23) The team member report of injury provides Nuhanovic had injured or had pain or a problem in this area before and she was treated by Dr. Gorsche. (Ex. 7, p. 23)

Nuhanovic developed a problem with rib pain due to pleurisy in April 2015. (JE 2, p. 1) Nuhanovic attended an appointment with her family care provider, Wheaton Franciscan Healthcare, on April 20, 2015, and was examined by Gregory Harter, M.D. (JE 2, p. 1)

On April 22, 2015, Nuhanovic attended an appointment with Dr. Gordon, complaining of pain in her neck, left shoulder, left thoracic spine, and lumbosacral

region, along with numbness and tingling down her left extremity which she first noticed in April 2014. (JE 3, p. 3) When questioned by Dr. Gordon concerning causation, Nuhanovic relayed she believed the trim jowls job caused her pain. (JE 3, p. 3) Dr. Gordon documented Nuhanovic had not sustained trauma to her spine or left lower extremity and listed an impression of cervical pain, thoracic pain, left posterior shoulder/scapular pain, and lumbosacral pain with left lower extremity symptomology. (JE 3, pp. 4-5) Dr. Gordon opined he did not believe Nuhanovic's position would have "precipitated all of the aforementioned symptomatology," recommended a job site evaluation, imposed restrictions of occasional bending and twisting at the waist, no lifting over ten pounds, and occasional gripping, pinching, pushing, or pulling with the left upper extremity, and prescribed Flexeril and naproxen. (JE 3, pp. 4-5)

During a follow-up appointment with Angie Fuller, PA-C, also with Wheaton Franciscan Healthcare, on April 23, 2015, Nuhanovic continued to complain of rib pain, and reported she was also experiencing low back pain radiating into her left leg. (JE 2, p. 3)

On April 27, 2015, Nuhanovic returned to Wheaton Franciscan Healthcare, and she was examined by her regular primary care provider, Lydia Mustafic, M.D. (JE 2, p. 4) Dr. Mustafic documented:

64-year-old white female presenting with severe low back pain radiating into posterior left buttocks posterior left leg into her left heel as well as pain with walking and her leg not wanting to work when she is walking, all since 04/09/2015. She was sent home on 04/09/2015 because she was dragging her leg behind her and had a lot of back pain. She saw the company doctors at Tyson's and states that she was told that she could not have possibly hurt herself at work because her position was not be [sic] one that would cause her that kind of injury. She was referred to physical therapy and went for one session at which time she was told that she should go home and do her own exercises that they gave her. She has been doing these exercises without any improvement. . . . Her pain is an 8/10 her low back. She also has a lot of pain in her left arm and shoulder radiating into her neck. Her neck hurt [sic] worse when she turns her head to the left and the pain shoots down her arm when she does that. She also has been having some mid back pain that radiates into her left ribs and she has been having a little bit more pain when she inhales deeply. Overall, patient is quite miserable and refuses to go back through workers comp. . . .

(JE 2, p. 5) During her examination, Dr. Mustafic noted, "low back muscles hypertrophied and with muscle spasms, same with thoracic spine paraspinal musculature. Positive straight leg raised test as well as contralateral straight leg raise test." (JE 2, p. 7) Dr. Mustafic further noted Nuhanovic had decreased dorsiflexion strength in her left foot. (JE 2, p. 7) Dr. Mustafic assessed Nuhanovic with chest pain, rib pain, uncontrolled hypertension, acute lumbar radiculopathy, internal derangement of

left shoulder, posterior neck pain, mid back pain on the left side, cervical radiculopathy, weakness of the left foot, and numbness and tingling of the left leg, and ordered magnetic resonance imaging of Nuhanovic's lumbar, cervical, and thoracic spine. (JE 2, p. 7)

Nuhanovic underwent cervical, thoracic, and lumbar spine magnetic resonance imaging on April 29, 2015. (JE 2, pp. 10-11) The reviewing radiologist listed an impression of:

1. No central canal stenosis, foraminal stenosis or significant disk osteophyte complex in the cervical spine. Hemangioma in the C4 vertebral body, benign lesion.
2. No evidence for central canal stenosis or foraminal stenosis or disk bulging in the thoracic spine. No appreciable DJD.
3. Transitional segment at lumbosacral junction with partial lumbarization of S1. Mild central canal stenosis at L4-L5 with mild bilateral foraminal stenosis at this level. The remaining levels demonstrate no significant central canal stenosis or foraminal stenosis. . . .
4. Several small annular fissures are present in the lumbar spine namely at L2-L3 and L5-S1.

(JE 2, p. 10)

On May 18, 2015, Tyson conducted a job analysis of the trim jowls job. (Ex. 10) The job analysis listed causal factors of "[t]m has pain in lower back and leg. Why does she have pain in lower back and leg? unknown." (Ex. 10, p. 40) The corrective action listed is "Tm To Test Rubber Mat." (Ex. 10, p. 40)

Nuhanovic attended an appointment with Gayathry Inamdar, M.D., an anesthesiologist specializing in pain management, on May 20, 2015. (JE 4, p. 1) Dr. Inamdar listed diagnoses of cervicgia, cervical spondylosis, lumbosacral disk degeneration, lumbosacral neuritis with radiculopathy, lumbosacral spondylosis, and lumbago. (JE 4, p. 2) Dr. Inamdar recommended a left side epidural steroid injection at L4-5, which was performed the next day. (JE 4, p. 2; JE 5, p. 1)

On June 9, 2015, Nuhanovic returned to Dr. Gordon, noting she had been off work since April 22, 2015, and reporting she had received magnetic resonance imaging and an injection. (JE 3, p. 6) Dr. Gordon examined Nuhanovic, and listed an impression of cervical pain, thoracic pain, left posterior shoulder/scapular pain, and lumbosacral pain with left lower extremity symptomatology, noted she had reached maximum medical improvement, and released her to return to her trim jowls job without restrictions. (JE 3, p. 7) Dr. Gordon opined "[t]his job, based upon my evaluation on the production floor, would not cause, precipitate, aggravate, or accelerate conditions about

the cervical, thoracic, left shoulder/scapular, or lumbosacral regions due to lack of sufficient putative biomechanical stressors." (JE 3, p. 7)

Nuhanovic continued to treat at Wheaton Franciscan Healthcare with Dr. Mustafic, Fuller, and Brian Sankey, D.O. (JE 2, pp. 11-18) During an appointment on June 30, 2015, Dr. Sankey noted Nuhanovic had received an injection in her back that helped for one week, and she was following with Dr. Inamdar, but her back pain was getting worse. (JE 2, p. 18)

Nuhanovic reported a work injury to Tyson on July 18, 2015. (Ex. 7, p. 24) Nuhanovic relayed when she was performing her job she started experiencing pain in her left leg, shoulder, both hands, and neck and numbness in her neck. (Ex. 7, p. 24) Nuhanovic documented she had been injured or had pain or problems in this area before and Drs. Gorsche and Gordon had treated her. (Ex. 7, p. 24)

On July 22, 2015, Nuhanovic attended a follow-up appointment with Dr. Gordon, noting when she returned to work on June 15, 2015, she had significant pain and issues in her abdominal region, she was hospitalized with an intestinal bacterial infection, and she had returned to work on July 9, 2015. (JE 3, p. 8) Dr. Gordon documented Nuhanovic was complaining of severe pain in her cervical spine, thoracic spine, lumbar spine, left trapezius region, left parascapular region, pain down her entire left extremity, but primarily of the ulnar aspect distal to the elbow, and pain down her left lower extremity posteriorly into the lateral foot. (JE 3, p. 8) When questioned regarding causation, Nuhanovic related her symptoms to the trim jowls job. (JE 3, p. 8) Dr. Gordon documented he had evaluated the job previously and he did not believe the job would have precipitated or aggravated any disorder of the cervical spine, left shoulder, left upper extremity, thoracic spine, lumbar spine, or left leg regions. (JE 3, p. 8) Dr. Gordon listed an impression of:

1. Cervical pain with radiation from the cervical region down into her left upper extremity to the ulnar three digits.
2. Left shoulder girdle pain.
3. Thoracic pain.
4. Lumbosacral pain with radiation of pain down her left lower extremity. Question whether she may have a radicular issue. It is of note that she has had a prior epidural steroid injection based upon her description to me.

(JE 3, p. 9) Dr. Gordon ordered Nuhanovic's medical records, and determined Nuhanovic could perform the trim jowls job. (JE 3, p. 9)

John Kruzich, MS, a physical therapist, conducted a job analysis of the trim jowls job on July 28, 2015, while observing Nuhanovic perform the job. (Ex. G) Kruzich issued a report concluding:

- The perceived intensity of exertion for this position is light as demonstrated to me.
- In consideration of factors known to be associated with risk of musculoskeletal injury of the lower back including load, posture, frequency, duration and static positions estimated back compressive forces are low.
- Regarding the neck, there does not appear to be significant risk factors involved for the development of a pathological disorder given the limited amount of active range of motion required to complete the job tasks as well as the absence of sustained awkward postures.
- Regarding the shoulder, evidence suggests that the development of shoulder disorders are more often than not due to a combination of risk factors (both occupational and non-occupational) From an occupational perspective, research demonstrates that awkward postures (sustained shoulder flexion or abduction >60 degrees) appears to be strongly related to the development of shoulder pathology while there is some evidence that highly repetitive work alone, force in combination with repetition, or force in combination with posture may lead to the development of shoulder symptoms. As demonstrated to me there is an absence of the above named risk factors with the Trim Jowls position.
- With regards to the distal right upper extremity (hand, wrist, and elbow), the Moore-Garg Strain Index was utilized as a means of analyzing the position for risk in developing distal upper extremity disorders. Taking into consideration risk factors including intensity of exertion, duration of exertion, efforts per minute, hand/wrist posture, speed of work, and duration of tasks per day this position was found to be safe (SI<3).

(Ex. G, p. 5) Kruzich then opined,

[b]ased on this job site evaluation, taking into account the composite of physical stressors of posture/kinematics, frequency, exertion, and force, along with the temporal analysis of individual sub-task performance, the causation/precipitation/aggravation/acceleration of pathological disorders about the cervical spine, thoracic spine, left shoulder/scapula, left upper extremity, lumbar spine, and left lower extremity regions due to the performance of the Trim Jowls position is not biomechanically/medically plausible.

(Ex. G, p. 5) Kruzich did not evaluate the trim jowls job with the upper conveyor belt or consider the upper conveyor belt in reaching his conclusions.

On August 5, 2015, Nuhanovic reported to Tyson she was injured at work on July 29, 2015. (Ex. 7, p. 25) Nuhanovic relayed, "I was doing my job started feeling numbness in right hand and all finger." (Ex. 7, p. 25) Nuhanovic reported she had not

been injured in this area before and she sought treatment with Dr. Gordon. (Ex. 7, p. 25)

Dr. Gordon examined Nuhanovic on August 5, 2015, noting he had received Nuhanovic's medical records and the Kruzich job site evaluation. (JE 3, pp. 10-11) Dr. Gordon documented Kruzich had noted "the position of trim jowls would not contribute to pathological disorders about the cervical spine, thoracic spine, left shoulder/scapula, left upper extremity, lumbar spine, and left lower extremity regions." (JE 3, p. 11) Dr. Gordon prescribed prednisone, Flexeril, a single physical therapy training session for a home exercise program, and found Nuhanovic could perform full duty work. (JE 3, p. 14)

On August 19, 2015, Dr. Gordon received and reviewed Nuhanovic's magnetic resonance imaging and examined her. (JE 3, pp. 16-22) Dr. Gordon again opined based on his job site evaluation and the evaluation by Kruzich, he did not believe the trim jowls job precipitated, aggravated, or accelerated Nuhanovic's cervical spine, left shoulder, thoracic spine, lumbosacral spine, left heel pain, or left leg symptoms, but agreed the trim jowls job could have caused or aggravated a right carpal tunnel syndrome, and he ordered electromyography. (JE 3, p. 18)

Tyson sent Nuhanovic a letter on August 31, 2015, attaching a copy of an August 5, 2015, medical record from Dr. Gordon and a July 28, 2015, job site evaluation, which Tyson relayed "indicates that your cervical, left shoulder, thoracic, lumbosacral and heel pain is not caused or aggravated by your work activities at Tyson Foods." (Ex. D, p. 1) The letter provided, given the determination, Tyson denied Nuhanovic's conditions were caused by her work with Tyson, but noted her right hand was an accepted condition. (Ex. D, p. 1)

On September 11, 2015, Nuhanovic underwent bilateral arm electrodiagnostic testing with Brian Sires, M.D., with Wheaton Franciscan Health, on a referral from Dr. Gordon. (JE 2, pp. 21-22; JE 6, pp. 1-3) Dr. Sires listed an impression of:

1. Moderate right carpal tunnel syndrome with median nerve entrapment at the wrist.
2. Mild left carpal tunnel syndrome with median nerve entrapment at the wrist – essentially unchanged when compared to the prior electrodiagnostic study of 04/22/2014.
3. No evidence for polyneuropathy or other entrapment injury bilaterally.

(JE 2, p. 24; JE 6, p. 3) Dr. Sires noted the study demonstrated a moderate right and mild left carpal tunnel syndrome and further noted his findings on the left were essentially unchanged when compared to prior testing on April 22, 2014. (JE 2, p. 24; JE 6, p. 3)

On September 23, 2015, Nuhanovic attended a follow-up appointment with Dr. Gordon. (JE 3, p. 19) Based on the electrodiagnostic studies, Dr. Gordon recommended an orthopedic evaluation, prescribed Mobic and Flexeril, imposed restrictions of occasional grasping with the right hand, and ordered Nuhanovic continue with a home exercise program. (JE 3, p. 21) Nuhanovic testified after she was diagnosed with carpal tunnel syndrome she did not perform the bagging hams job again, and either performed light duty work or the trim jowls job. (Ex. A, p. 5)

Nuhanovic attended a follow-up appointment with Fuller on September 30, 2015, complaining of neck and left shoulder pain. (JE 2, p. 25) Fuller documented Nuhanovic underwent physical therapy "for this in 2014 and it helped the shoulder but not the neck" and noted she also had low back pain and "left hip pain and down left leg below her knee." (JE 2, p. 25)

On December 3, 2015, Dr. Gorsche found Nuhanovic had reached maximum medical improvement and opined she had not sustained a functional permanent impairment. (JE 1, p. 4)

On July 16, 2016, Nuhanovic reported she began experiencing pain in her hands, back, neck and left leg while performing the trim jowls job at Tyson. (Ex. 7, p. 26) Nuhanovic documented she been injured or experienced pain or problems in this area before and she had been treated by Drs. Gorsche and Gordon. (Ex. 7, p. 26)

Nuhanovic returned to Dr. Gordon on July 27, 2016, complaining of numbness and tingling in her right hand, left small digit trigger digit, and left hand numbness. (JE 3, pp. 23-24) Dr. Gordon opined the trim jowls job could have contributed to Nuhanovic's right hand carpal tunnel syndrome only, and opined the position could not have contributed to cervical radiculopathy, or caused left small digit trigger digit, or left upper extremity peripheral nerve entrapment. (JE 3, p. 24)

Nuhanovic was referred to Dr. Gorsche and he performed a left fifth finger trigger release on September 1, 2016. (JE 7, p. 1) During an appointment on September 13, 2016, Dr. Gorsche examined Nuhanovic, recommended a right carpal tunnel release, and imposed restrictions of no repetitive gripping or grasping bilaterally. (JE 7, p. 1)

On October 5, 2016, Nuhanovic attended an appointment with Gary Knudson, M.D., an orthopedic surgeon, regarding left shoulder pain. (JE 8, p. 12) Dr. Knudson examined Nuhanovic, reviewed her imaging, assessed her with left shoulder pain and right carpal tunnel syndrome, and recommended a subacromial cortisone injection, which he administered. (JE 8, p. 16)

Dr. Gorsche performed a right carpal tunnel release on Nuhanovic on October 26, 2016. (JE 7, p. 2) Nuhanovic denied any triggering of her left fifth finger, but complained of a nodule and tenderness. (JE 7, p. 2) Dr. Gorsche imposed restrictions of light duty work with no repetitive gripping or grasping bilaterally, and ordered physical therapy. (JE 7, p. 2)

On November 3, 2016, Nuhanovic attended an appointment with Dr. Knudson. (JE 8, p. 10) Dr. Knudson assessed Nuhanovic with left shoulder pain, right carpal tunnel syndrome, and neck pain, and recommended cervical spine magnetic resonance imaging. (JE 8, p. 12)

During an appointment with Dr. Knudson on December 6, 2016, Nuhanovic reported she had received no significant relief following a left shoulder subacromial injection. (JE 8, p. 8) Dr. Knudson reviewed Nuhanovic's cervical spine magnetic resonance imaging, and found no evidence of high grade spinal canal or neuroforaminal stenosis, assessed Nuhanovic with neck pain and left shoulder pain, and recommended a neurosurgical evaluation and possible referral for pain management. (JE 8, p. 10)

On December 12, 2016, Nuhanovic attended an appointment with Dr. Gorsche, following a right carpal tunnel release on October 26, 2016, and left fifth trigger finger release on September 1, 2016. (JE 1, p. 5) Nuhanovic relayed she was not having any locking of her left fifth finger, but she was experiencing pain radiating up the ulnar aspect of her forearm and left side paresthesias for two weeks, and she was having some numbness in the morning for thirty minutes in her right upper extremity. (JE 1, p. 5) Dr. Gorsche listed an impression of status post right carpal tunnel release, status post left fifth trigger finger release, and new onset of left hand paresthesias. (JE 1, p. 5) Dr. Gorsche prescribed bilateral wrist splints at night, ordered a padded glove for Nuhanovic's left hand, and noted she could wrap her hands with Koban. (JE 1, p. 5)

Nuhanovic returned to Dr. Gorsche on January 9, 2017, reporting she was experiencing paresthesias in her left hand, particularly in the morning. (JE 7, p. 3) Dr. Gorsche noted nerve conduction studies performed on December 30, 2016, showed "the motor latency was prolonged. The medial sensory latency was prolonged. It was read out as significant left carpal tunnel syndrome." (JE 7, p. 3) Dr. Gorsche recommended a left carpal tunnel release. (JE 7, p. 3) With respect to her right upper extremity, Dr. Gorsche found Nuhanovic reached maximum medical improvement on January 9, 2017, and he issued an impairment rating of three percent. (JE 7, p. 4)

On January 19, 2017, Nuhanovic underwent a left carpal tunnel release. (JE 7, p. 5) During an appointment with Dr. Gorsche on January 31, 2017, Nuhanovic complained of increased numbness in her hand and difficulty grabbing. (JE 7, p. 5) Dr. Gorsche ordered physical therapy, and no work with the left hand. (JE 7, p. 5)

On January 21, 2017, Nuhanovic signed a letter acknowledging Dr. Gorsche had released her to return to work with restrictions and she had decided not to accept a temporary transitional duty assignment job offer and preferred to stay off work on her own until January 23, 2017. (Ex. N, p. 1) Nuhanovic agreed she understood she may not be entitled to receive weekly workers' compensation benefits during the period she declined to work on a temporary transitional duty assignment. (Ex. N, p. 1)

Nuhanovic returned to Dr. Gorsche complaining of left elbow pain and numbness of the left long and ring finger on February 21, 2017. (JE 7, p. 7) Dr. Gorsche documented therapy was not helping, ordered Nuhanovic to work on range of motion at home, and allowed her to start using her left hand at work with no repetitive gripping or grasping. (JE 7, p. 7)

Nuhanovic received lumbar spine magnetic resonance imaging on March 20, 2017. (JE 5, p. 2) The reviewing radiologist listed an impression of stable degenerative disk disease at L4-5 resulting in mild central stenosis and mild bilateral lateral recess stenosis with disk material abutting bilateral traversing L5 nerve roots and stable mild degenerative changes at L5-S1 without central or foraminal stenosis. (JE 5, p. 3)

During an appointment with Dr. Gorsche on March 21, 2017, Nuhanovic complained of constant left hand numbness in the ring and long finger, some occasional thumb numbness, and numbness in the index finger with popping in the morning. (JE 1, p. 7) With respect to the right side, Nuhanovic complained of some pain, but no numbness or tingling. (JE 1, p. 7) Dr. Gorsche listed an impression of status post left carpal tunnel release, status post right carpal tunnel release, and status post left trigger finger release. (JE 1, p. 7) Dr. Gorsche imposed restrictions of no repetitive gripping or grasping, and documented he told Nuhanovic she may always have numbness in her long and ring fingers. (JE 1, p. 7)

On March 30, 2017, Nuhanovic attended an appointment with Dr. Knudson regarding left shoulder pain. (JE 8, p. 5) Dr. Knudson found Nuhanovic had limited range of motion in her left shoulder with pain, and reviewed her x-rays and magnetic resonance imaging. (JE 8, pp. 6-7) Dr. Knudson listed an impression of:

1. Tendinosis and partial-thickness bursal sided tear of the supraspinatus tendon.
2. No full-thickness rotator cuff tear.
3. Posterior superior labral tear.
4. 30 degrees lateral downsloping acromion is noted. Mild to moderate degree of hypertrophic osteoarthritic changes of the acromioclavicular joint are noted. This results in moderate degree of mass effect on the myotendinous junction of supraspinatus tendon.

(JE 8, p. 7) Dr. Knudson assessed Nuhanovic with left shoulder pain, right shoulder pain, right carpal tunnel syndrome, and left shoulder impingement, and recommended a left shoulder arthroscopy with decompression and distal clavicle excision. (JE 8, pp. 7-8)

On April 6, 2017, Nuhanovic received a left paramedian L4-L5 interlaminar epidural steroid injection from Sauman Rafii, M.D. (JE 5, p. 4)

On May 1, 2017, Nuhanovic attended a follow-up appointment with Dr. Gorsche. (JE 1, p. 9) Dr. Gorsche reviewed recent electromyography testing and noted the testing was normal, but Nuhanovic had prolonged motor and sensory latency bilaterally and the carpal tunnel release did not provide significant relief. (JE 1, p. 9) Dr. Gorsche noted Nuhanovic had undergone a left shoulder arthroscopy. (JE 1, p. 9) Dr. Gorsche informed Nuhanovic she may have a twenty-five percent improvement with a repeat surgery, and imposed restrictions of no repetitive gripping or grasping bilaterally. (JE 1, p. 9)

On May 3, 2017, Nuhanovic attended an appointment with Dr. Knudson, following a left shoulder arthroscopy and decompression performed on April 19, 2017. (JE 8, p. 4) Dr. Knudson ordered Nuhanovic continue exercises outlined in physical therapy to work on range of motion and to gradually progress to light use of the left arm over the next four to six weeks. (JE 8, p. 5)

On June 7, 2017, Nuhanovic attended an appointment with Dr. Knudson. (JE 8, p. 3) Dr. Knudson assessed Nuhanovic with left shoulder impingement, and recommended aggressive range of motion gentle strengthening. (JE 8, p. 4)

Dr. Gorsche performed repeat right carpal tunnel and left carpal tunnel releases on Nuhanovic on May 17, 2017 and July 27, 2017, respectively. (JE 1, p. 11) During an appointment on September 25, 2017, Dr. Gorsche noted Nuhanovic had no numbness on the left, but she continued to complain of ring and long finger numbness, "a nodule at the base of the ring finger," and the pain shooting up her elbow on the left side. (JE 1, p. 11) Dr. Gorsche opined Nuhanovic had reached maximum medical improvement and imposed a permanent restriction of no use of vibratory tools bilaterally. (JE 1, p. 11) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Gorsche opined Nuhanovic had sustained a seven percent permanent impairment to the left upper extremity. (JE 1, p. 13)

On August 2, 2017, Nuhanovic attended an appointment with Dr. Knudson, regarding left shoulder pain. (JE 8, p. 1) Dr. Knudson assessed Nuhanovic with left shoulder impingement, and administered an injection into her shoulder. (JE 8, p. 2)

Stanley Mathew, M.D., a physiatrist, performed an independent medical examination for Nuhanovic on October 5, 2017. (Ex. 1) Dr. Mathew examined Nuhanovic and reviewed her medical records, including her imaging. (Ex. 1) Dr. Mathew diagnosed Nuhanovic with chronic neck pain, enthesopathy of the cervical spine, chronic low back pain, bilateral carpal tunnel syndrome, status post bilateral carpal tunnel release times two, trigger finger left upper extremity status post trigger finger release, LS radiculopathy status post epidural steroid injection, left shoulder rotator cuff tendinitis status post arthroscopic surgery, chronic myofascial pain syndrome, upper and lower extremity weakness, and gait and balance deficits. (Ex. 1, p. 4)

Dr. Mathew opined Nuhanovic's neck, shoulder, left arm, right arm, and low back conditions were caused by her work activities at Tyson over nineteen years. (Ex. 1, pp. 4-5) Using the AMA Guides Dr. Mathew found Nuhanovic had sustained a six percent permanent impairment to her neck. (Ex. 1, p. 4) Dr. Mathew assigned a five percent whole person permanent impairment for her left shoulder using Table 16-18. (Ex. 1, p. 4) Using Table 16-18 of the AMA Guides, Dr. Mathew assigned a ten percent whole person impairment to the left upper extremity, and a ten percent whole person impairment to the right upper extremity. (Ex. 1, p. 5) Dr. Mathew assigned an eight percent permanent impairment for her low back, five percent permanent impairment for her neck, and a three percent permanent impairment for her thoracic spine, using Table 15-5. (Ex. 1, p. 5)

Dr. Mathew imposed permanent restrictions of avoiding lifting over ten pounds, repetitive pushing and pulling, repetitive overhead activities, and repetitive motion of the cervical spine, left shoulder, bilateral upper extremities, and also recommended restrictions of avoiding prolonged standing, walking, bending, lifting, and squatting. (Ex. 1, pp. 4-5) Dr. Mathew did not assign an additional impairment rating for the left leg, finding Nuhanovic's left leg complaints are directly related to her low back injury, and opining her left leg weakness is due to lumbosacral radiculopathy. (Ex. 1, p. 5) Dr. Mathew recommended evaluation and treatment for chronic pain, and noted Nuhanovic would benefit from injection therapy and medication management, and will likely require further injections, and possible surgical intervention. (Ex. 1, p. 5)

On October 10, 2017, Nuhanovic attended an appointment with Dr. Gordon reporting a nodularity in the region of the proximal phalanx. (JE 3, p. 26) Dr. Gordon examined Nuhanovic and noted a small "BB-sized hard nodularity of the proximal phalanx of the left right digit radially" with mild tenderness with compression. (JE 3, p. 26) Dr. Gordon prescribed a padded glove, and discharged Nuhanovic without restrictions and assigned no permanent impairment for the nodularity. (JE 3, p. 26)

From November 2017 through January 2018, Nuhanovic received follow-up care from Dr. Mustafic for chronic back and neck pain, left-sided neck and back spasms, bilateral shoulder pain, left leg pain, and carpal tunnel syndrome. (JE 9, pp. 3-15, 27-36)

Dr. Mustafic responded yes or no and provided brief written responses to questions posed by Nuhanovic's counsel on November 28, 2017. Dr. Mustafic agreed "Nuhanovic's repetitive work activities while employed at Tyson Foods and reported on 04/07/15, were a substantial contributing factor in causing, aggravating or accelerating" any neck, shoulder, back, left leg, and mental impairment. (Ex. 2, pp. 10-12) Dr. Mustafic did not list any diagnoses. Dr. Mustafic recommended permanent restrictions of no lifting more than one pound or reaching overhead for her neck injury, no lifting over five pounds for her left shoulder injury, and no twisting, bending, crouching, or lifting over five pounds, or standing or sitting for more than five minutes at a time for her back injury and left leg injury. (Ex. 2, pp. 10-12) With respect to permanent restrictions for a mental impairment, Dr. Mustafic responded, "[p]atient is getting increasingly

depressed due to loss of function due to work injuries.” (Ex. 2, p. 12) Dr. Mustafic recommended future care, including physical therapy, pain medications, muscle relaxers, antidepressants, possible further surgery, and counseling for depression. (Ex. 2, p. 13) Dr. Mustafic wrote, Nuhanovic “cannot continue to work anywhere. She has injuries in multiple joints & muscles all over her body and is permanently disabled.” (Ex. 2, p. 13)

Dr. Mustafic referred Nuhanovic to Mahesh Mohan, M.D., a physiatrist, for pain management in January 2018. (JE 9, pp. 16, 37) Dr. Mohan reviewed Nuhanovic’s imaging, examined her, assessed her with lumbar degenerative disk disease, lumbar radiculopathy, and bilateral wrist pain. (JE 9, pp. 16-20, 36-41) Dr. Mohan recommended and performed a lumbar epidural steroid injection. (JE 9, pp. 20-21, 40-41)

Nuhanovic returned to Dr. Mohan on February 2, 2018, reporting a sixty percent improvement in her low back and left thigh pain following the injection, but also reporting pain on the lateral aspect of her left foot. (JE 9, p. 21, 41) Dr. Mohan recommended a home exercise program and reduction of her oxycodone use. (JE 9, pp. 26, 46)

On February 14, 2018, Dr. Gordon issued an opinion letter for Tyson after reviewing Dr. Mathew’s report. (Ex. J) Dr. Gordon opined the trim jowls job would not cause, precipitate, aggravate, accelerate, or light up disorders in the cervical region, including cervical radiculopathy, left shoulder region, left upper extremity peripheral nerve entrapment, or left brachialgia, thoracic region, lumbar region or left lower extremity, right shoulder, or left foot plantar fasciitis, based on his biomechanical jobsite evaluation, the biomechanical jobsite evaluation performed by Kruzich, and the job video. (Ex. J)

Dr. Gordon challenged Dr. Mathew’s report, stating Dr. Mathew had failed to provide any medically or biomechanically reasonable rationale regarding the alleged work injuries and the trim jowls position to support his opinions. (Ex. J) Dr. Gordon also noted duration of employment and repetition alone does not fulfill any known criteria to establish causation or an aggravation. (Ex. J, p. 7)

Counsel for Tyson sent a letter to Dr. Knudson on February 15, 2018, asking him to agree or disagree with statements posed by counsel. (Ex. L, p. 1) Dr. Knudson responded on February 20, 2018, agreeing with the following statements, without providing any written comments:

1. While Claimant’s job duties required her to perform actions away from the body, the objective findings of the job analysis and Claimant’s medical records do not identify a biomechanical stressor that would provide an etiology for her alleged left shoulder condition and therefore it is your opinion that her condition is not related to her employment at Tyson? [sic]

2. Furthermore, in light of Claimant's alleged ongoing symptoms following her left shoulder arthroscopy it is your opinion that her current complaints are unrelated to her left shoulder condition.

(Ex. L, p. 1)

On February 26, 2018, Dr. Mathew provided a supplemental opinion letter after receiving medical records and opinions from Dr. Gordon, in addition to other medical records, the job analysis summary, and deposition of Nuhanovic. (Ex. 3, p. 14) Dr. Mathew responded:

I will address comments made by Dr. Robert Gordon in his letter which he drafted in response to my opinions.

I will have to respectfully disagree with his report and opinions. I would refer to my independent medical exam dated October 5, 2017 for a full report of Mrs. Nuhanovic's injuries, diagnoses, present condition, and functional status.

Dr. Gordon as he frequently states that there is no biomechanical factor associated with Mrs. Nuhanovic's injuries. It is well documented throughout medical literature that repetitive body movements including, frequent pushing, pulling, prolonged standing, twisting, reaching or biomechanical factors that can cause injuries to the soft tissue including tendons, ligaments.

Attorney Jason P. Wiltfang has written a letter dated, January 23, 2018, which I had a chance to review.

I believe this gives a very good summary and time line of Mrs. Nuhanovic's position, work environment, and activity level while working at Tyson. Mrs. Nuhanovic's description of her work at Tyson at various jobs provides further support for my opinion.

She has worked for Tyson for over 18 years standing on a line cleaning meat. Post every injury, she returned to work, continued to work in pain until the pain became so severe she could no longer perform her job duties.

Throughout Counselor, Wiltfang's chronological summary, there are complaints of discomfort and pain as well as reports of returning to work after April 10, 2014 through the end of March 2017.

Dr. Gordon's opinions that Mrs. Nuhanovic has not suffered any biomechanical injury through 18 years of manual labor of cleaning meat, repetitive motion, prolonged standing, walking, bending and lifting is very difficult to understand and I respectfully disagreed with the [sic].

I stand by my opinions that were rendered October 5, 2017 when my IME [sic] performed.

(Ex. 3, pp. 14-15)

Dr. Knudson provided an opinion letter to Nuhanovic's counsel on February 28, 2018, agreeing to the following statements without providing any written comments regarding Nuhanovic's left shoulder:

1. The only job analysis/video/job description provided to me was for the Tyson Trim Jowls job.
2. In your experience, repetitive work involving hands, wrists and shoulders are biomechanical stressors to the muscles and joints of the upper extremities.
3. Tyson has stated (in the correspondence to you of 01/15/18) that Hata Nuhanovic's **"job duties required her to perform actions away from her body."**
4. Hata Nuhanovic provided a history on the development of her left shoulder pain at the office visit on 10/05/16, stating, **"Onset was gradual, starting about 1 year ago. Inciting event: overuse at work"** and I have no other information about any other non-work activities causing the left shoulder pain and other conditions of the left shoulder.
5. Hata Nuhanovic's Team Member Statement of Injury/Illness form (enclosed) described her injury from **"Picking jowls from belt and placing it into the combo, suddenly felt shooting pain in neck, shoulder (left)"** which is consistent with a repetitive work injury.
6. Hata Nuhanovic's work at the "Trim Jowls" job and the repetitive work activity away from her body materially aggravated her left shoulder, causing her symptoms and need for medical treatment.

(Ex. 4, pp. 16-18)

Counsel for Tyson sent Dr. Knudson a letter on March 13, 2018, asking him to agree or disagree with statements posed by counsel. (Ex. M) Dr. Knudson responded on March 13, 2018, agreeing with the statements as follows:

1. I have now reviewed the jobsite video that documents the duties required by the Trim Jowls position.
2. I have reviewed the objective findings of the jobsite analysis performed by Mr. John Kruzich.

3. I have reviewed the provided portion of Claimant's deposition transcript regarding her job duties prior to her alleged left shoulder symptoms.

4. From your review of the video of Claimant's duties, previously provided documents and her deposition testimony it is your opinion that the trim jowls position would not exacerbate, aggravate, cause to flare up or provide a medical etiology that would explain the Claimant's alleged left shoulder injury.

5. I am still in agreement with the conclusions I expressed to you in my 02/20/18 correspondence.

(Ex. M, p. 2)

Pursuant to a request from Nuhanovic's counsel, Dr. Knudson sent an opinion letter on April 23, 2018, agreeing with the following statements without providing any written comments:

1. Hata Nuhanovic's repetitive work at the Trim Jowls job involving the underhand toss/throw of the meat to the elevated conveyor belt materially exacerbated, aggravated or caused Hata Nuhanovic's left shoulder to be more susceptible to the injury that occurred on April 7, 2015.
2. The jobsite video of the job that I reviewed did not show the repetitive activity in the underhand toss/throw of the meat to the elevated conveyor belt.

(Ex. 16, p. 2)

At the time of the hearing Nuhanovic was taking oxycodone twice a day. (Tr., p. 47) She relayed the two middle fingers on her left hand are numb and "that pain stems all the way to the shoulder." (Tr., p. 47) Nuhanovic testified, "I don't have much control when I am trying to grab something or hold onto something. It would fall. The right hurts also, but not as much as the left." (Tr., p. 47) Nuhanovic stated she can only pick up objects with her right hand and assists with her left hand. (Tr., p. 48) Nuhanovic does not have numbness in the right hand, but relayed it is weaker than it used to be. (Tr., p. 49)

Nuhanovic testified her left shoulder still hurts after surgery and relayed she has pain from her neck through her shoulder, and complained of a bulging by her collarbone. (Tr., pp. 49-50) Nuhanovic can extend her right arm above her head, but she cannot extend her left arm above her head. (Tr., p. 50)

Nuhanovic reported she has pain in her neck that radiates "throughout the shoulder." (Tr., pp. 50-51) She also relayed she has numbness and pain from the middle of her back and the "tingling and numbness goes . . . all the way to the heel," including "the entire sole of the – sole of the foot, all the way to the – the numbness and tingling goes all the way through the foot to the toes" and she feels like it is weak. (Tr., pp. 51-52)

Nuhanovic testified she has difficulty sleeping more than two or three hours and her family physician has diagnosed her with depression. (Tr., p. 53) Nuhanovic reported the most she can lift with her left arm is three pounds and she has to help lift items with her right arm. (Tr., p. 68) Nuhanovic stated she can do more with her right side, but she cannot lift a gallon of milk. (Tr., pp. 68-69)

Nuhanovic can carry a dinner plate with her right hand, but reported she cannot with her left hand because she does not have "very good sensation" in her fingers. (Tr., p. 69) Nuhanovic's daughter cleans and cooks for her, and purchases ready-made food Nuhanovic can warm up in the microwave. (Tr., p. 69) Nuhanovic's daughter also assists her with washing her hair and dressing. (Tr., p. 70)

Nuhanovic holds a driver's license and reported she can drive with her right hand. (Tr., pp. 70-71) Nuhanovic relayed she places her left hand onto the steering wheel and maneuvers with her right. (Tr., p. 71) Nuhanovic testified she does not drive much, just to go to the hospital. (Tr., p. 71)

Dr. Gordon testified at hearing he observed the trim jowls job, which basically involves the cutting of jowls and sliding the jowls into chutes. (Tr., pp. 80-81) Dr. Gordon relayed he has observed the trim jowls job in its original configuration and reported, "[t]here's no need to, you know, overhand throw it. Individuals never did that. It's an underhand toss." (Tr., pp. 90-92)

Dr. Gordon is six feet three inches tall. (Tr., p. 92) Nuhanovic is five feet five inches tall. (Tr., p. 91) Dr. Gordon testified he believed the upper conveyor was five feet off the ground, but he did not measure it. (Tr., p. 92) When questioned, Dr. Gordon agreed he did not know the distance between the ground and the upper conveyor belt. (Tr., pp. 92-93) Dr. Gordon reported the trim jowls job was changed to its current configuration five years ago, in 2013. (Tr., pp. 93, 100-01) Dr. Gordon relayed Marlin Nix also informed him the configuration was changed five years ago, pursuant to an administrative decision. (Tr., p. 101) Nix did not testify at hearing. No other employees from Tyson testified concerning the date the configuration changed.

The best evidence concerning the configuration is from the job safety analysis of the trim jowls position performed by Marvel for Tyson on July 10, 2013. (Ex. 9) Marvel noted strain is a potential hazard from pulling the jowl from the conveyor to the table, inspecting the jowls, and placing defects down on the trim conveyor, placing jowl on the upper conveyor or lower conveyor with the non-knife hand, and throwing the jowl into

the inedible barrel. (Ex. 9, pp. 35-36) Nuhanovic and her supervisor signed the job safety analysis on April 3, 2014, less than a year later. (Ex. 9) The job safety analysis Nuhanovic and her supervisor signed documents the upper conveyor was still in use on April 3, 2014, as follows: “[p]lace defects down on trim conveyor. Place jowl on upper conveyor or lower conveyor with your non-knife hand.” (Ex. 9, p. 36) The evidence supports the upper conveyor belt was present on April 3, 2014.

Dr. Gordon opined there were not any stressors associated with the trim jowls, blender, or bagging hams jobs that would affect the shoulders, neck, or lumbar spine. (Tr., pp. 83, 87-89) Dr. Gordon testified he has not “seen anyone with [a shoulder condition] due to trim jowls.” (Tr., p. 102) Dr. Gordon relayed an individual could do a “side toss or a front toss,” which “does not put your shoulder in any deleterious conditions, or any deleterious positions I should say.” (Tr., p. 107)

I. Nature of the Injury

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

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

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). 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 question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

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).

Nuhanovic alleges she sustained cumulative injuries to her bilateral upper extremities, left shoulder, cervical spine, thoracic spine, lumbar spine, and left leg caused by her work at Tyson and sequela depression. Tyson rejects her assertion, contending any conditions Nuhanovic has are personal to Nuhanovic, and she has not sustained a permanent impairment.

Cumulative injuries are occupational diseases that develop over time. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015). A cumulative injury results from repetitive trauma in the workplace. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). “A cumulative injury is deemed to have occurred when it manifests – and

‘manifestation’ is that point in time when ‘both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.’” Baker, 872 N.W.2d at 681.

This case is difficult because the expert opinions obtained by the parties are biased, weak, flawed, and equivocal. I am charged with determining the truth based on the evidence presented to me at hearing. Considering the entirety of the evidence, I find Nuhanovic has met her burden of establishing she sustained permanent impairments to her bilateral upper extremities (carpal tunnel syndrome) and left shoulder as a result of the work injury. I do not find she has met her burden of proof she sustained permanent impairments beyond carpal tunnel syndrome to her bilateral upper extremities, or to her cervical spine, thoracic spine, or lumbar spine, or sequela depression caused by her work at Tyson. I find the causation opinions of Drs. Gorsche and Knudson, the treating orthopedic surgeons, most persuasive. I do not find the causation opinions of Drs. Gordon, Mathew, and Mustafic, persuasive on causation for the reasons set forth below.

Dr. Gordon, an occupational medicine physician, works for Tyson treating employees within the plant, pursuant to an agreement between his medical group and Tyson. Dr. Gordon has treated employees at Tyson since 2010. Dr. Gordon has a direct interest in this case given the financial remuneration he receives directly from Tyson on an ongoing basis.

In addition to my concerns about Dr. Gordon’s relationship with Tyson as its treating physician in the plant, his “treatment records” nearly always list a zero percent impairment rating and no causation, even upon first evaluation. I did not find his testimony at hearing that tossing meat onto the upper conveyor belt could not cause a shoulder injury and demonstration of a sidearm toss convincing. His opinion is also based, in part, on the flawed report prepared by Kruzich at the plant. Kruzich did not evaluate the trim jowls job with the upper conveyor belt configuration.

Tyson has not accepted the left fifth finger release or a left upper extremity peripheral nerve entrapment conditions. Dr. Gordon opined while the trim jowls job could have contributed to Nuhanovic’s right hand carpal tunnel syndrome only, the position could not have caused left small digit trigger digit, or left upper extremity peripheral nerve entrapment. (JE 3, p. 24) Dr. Gordon did not provide any discussion or other analysis as to how Nuhanovic’s left trigger digit could have been caused by an activity other than work.

Dr. Mathew, a physiatrist, also has an interest in this case given he performed an independent medical examination for Nuhanovic, for which he was paid. Dr. Mathew’s report contains summary conclusions, with little to no analysis supporting his conclusions. It also contains a major error concerning a diagnosis. In his report, Dr. Mathew lists diagnoses of right arm pain, right wrist carpal tunnel syndrome, **right hand trigger finger**, right upper extremity pain and weakness. (Ex. 1, p. 5) Dr. Gorsche did

not diagnose or treat Nuhanovic for right trigger finger; he treated her for left trigger finger. No effort was made to correct the error prior to the hearing.

Dr. Mustafic, a family medicine physician is the only physician who agreed Nuhanovic has a mental health condition, in addition to other conditions. Dr. Mustafic does not list any diagnoses in her response to the letter from Nuhanovic's counsel. (Ex. 2) Moreover, her opinion concerning the left leg is inconsistent with Dr. Mathew's opinion, finding the left leg symptoms are adequately addressed by his findings concerning Nuhanovic's lumbar spine.

I do not find Dr. Mustafic's opinion persuasive or her diagnosis of depression and need for additional care consistent with Nuhanovic's treatment records. In her response to a letter sent to her by Nuhanovic's counsel, Dr. Mustafic agreed Nuhanovic's work activities "were a substantial contributing factor in causing, aggravating or accelerating any mental impairment," without providing any written comments or diagnosis. (Ex. 2, p. 12) Additionally, counsel for Nuhanovic next asked, "[a]re any permanent restrictions required because of any mental impairment, if so, please list," and Dr. Mustafic again checked "yes," and wrote, "[p]atient is getting increasingly depressed due to loss of function due to work injuries." (Ex. 2, p. 12) Dr. Mustafic's answer is not responsive to the question posed. Dr. Mustafic has not opined whether Nuhanovic's alleged condition is temporary or permanent. Her responses are not consistent with Nuhanovic's treatment records.

Dr. Mustafic first documented Nuhanovic had reported a work injury during her appointment on April 27, 2015. (JE 2, p. 4) There is no documentation in her treatment records or those of other treating providers at Wheaton Franciscan Healthcare or at Covenant Clinic of a diagnosis of major depressive disorder. (JE 2; JE 6; JE 9) No referral was made to a psychiatrist, psychologist, or counselor for treatment. In fact, a note from January 8, 2018 documents, "[p]sychiatric: She has a normal mood and affect. Her behavior is normal," and "[p]sychiatric/Behavioral: Negative for dysphoric mood. The patient is not nervous/anxious." (JE 9, pp. 14, 33) This finding is also documented on December 13, 2017, January 2, 2018, January 11, 2018. (JE 9, pp. 19, 29, 31) There is no documentation in the treatment records from Wheaton Franciscan Healthcare of a prescription for antidepressant medication. (JE 2; JE 6; JE 9) I reject Dr. Mustafic's conclusory opinions, checking yes and no to Nuhanovic's counsel's letters, with limited analysis. Nuhanovic has not met her burden of proof she sustained sequela major depressive disorder or any other mental health sequela as a result of the work injury.

Nuhanovic's medical records support Nuhanovic has degeneration and stenosis in her lumbar spine, chronic neck pain, and chronic low back pain. Dr. Mustafic responded to a form letter from opposing counsel checking she agreed Nuhanovic's repetitive work injuries were a substantial contributing factor in aggravating or accelerating a neck injury, and a back injury. (Ex. 2) Dr. Mustafic does not list any diagnoses in her opinion, or describe what portion of "the back" was injured. Dr. Mustafic's conclusory report does not support Nuhanovic had a preexisting condition

that was aggravated, accelerated, worsened, or "lighted up" by a cumulative injury arising out of and in the course of Nuhanovic's employment with Tyson.

As noted, above, I also reject Dr. Mathew's conclusory opinions. His opinions are flawed and provide no analysis on how Nuhanovic's work aggravated, accelerated, worsened, or "lighted up" conditions in her cervical spine, thoracic spine, or lumbar spine. Nuhanovic has not established she sustained permanent impairments to her cervical, thoracic, or lumbar spine that were aggravated, accelerated, worsened, or "lighted up" by her work for Tyson.

Drs. Gorsche and Dr. Knudson are both treating orthopedic surgeons. I find their opinions most persuasive.

Dr. Gorsche's opinions are consistent and clear throughout. Dr. Gorsche treated Nuhanovic for more than a year, and performed five surgeries on her, including, a left fifth finger release on September 1, 2016, a right carpal tunnel release on October 26, 2016, a left carpal tunnel release on January 19, 2017, a repeat right carpal tunnel release on May 17, 2017, and a repeat left carpal tunnel release on July 27, 2017. Dr. Gorsche's opinions are clear and supported by Nuhanovic's treatment records.

Dr. Gorsche has opined Nuhanovic had sustained a permanent impairment to her right upper extremity and he assigned a three percent permanent impairment rating. (JE 7, p. 4) Dr. Gorsche also found Nuhanovic sustained a permanent impairment to her left upper extremity, and he assigned a seven percent permanent impairment rating. (JE 1, p. 13) Dr. Gorsche also imposed restrictions of no use of vibratory tools bilaterally. (JE 1, p. 13) Dr. Gorsche did not issue an opinion concerning any permanent impairments to Nuhanovic's upper extremities other than carpal tunnel syndrome. It does not appear Nuhanovic or Tyson requested Dr. Gorsche's opinion concerning other upper extremity conditions. Nuhanovic has not established she sustained any permanent impairments to her bilateral upper extremities other than carpal tunnel syndrome.

Dr. Knudson submitted several different opinions on causation. However, his opinion finding no causation is based on flawed information supplied by Tyson, muddying his opinion. Tyson did not provide Dr. Knudson with accurate information concerning the nature of the trim jowls job prior to the removal of the upper conveyor. After receiving accurate information concerning Nuhanovic's job duties and considering the symptomology timeline, as supported by the record, Dr. Knudson agreed tossing the meat onto the elevated conveyor belt materially exacerbated, aggravated or caused Nuhanovic's left shoulder to be more susceptible to the injury that occurred on April 7, 2015. Dr. Knudson's finding of causation is supported by Nuhanovic's treatment records and her symptomology timeline. I find his opinion most persuasive on the issue of causation for Nuhanovic's left shoulder. Nuhanovic has established her work aggravated, accelerated, worsened, or "lighted up" her left shoulder condition.

II. Extent of Disability

“Industrial disability is determined by an evaluation of the employee’s earning capacity.” Pease, 807 N.W.2d at 852. In considering the employee’s earning capacity, the deputy commissioner evaluates several factors, including “consideration of not only the claimant’s functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment.” Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee’s “ability to be gainfully employed.” Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Nuhanovic contends she is permanently and totally disabled. Tyson rejects her assertion. In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtain, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy’s ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant’s medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is “unable to perform services other than ‘those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.’” Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

“Total disability does not mean a state of absolute helplessness.” Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability “occurs when the injury wholly disables the employee from performing work that the employee’s experience, training, intelligence, and physical capacity would otherwise permit the employee to perform.” IBP, Inc., 604 N.W.2d at 633.

At the time of the March 2018 hearing, Nuhanovic was fifty-seven. (JE 1, p. 1) Nuhanovic was born in Bosnia and moved to the United States in January 1998. (Tr., p. 12; Ex. A, p. 3) Nuhanovic completed the eighth grade in Bosnia. (Tr., pp. 14-15; Ex A, p. 2) Nuhanovic has not attended any additional schooling. (Tr., p. 15) Nuhanovic is unable to speak and write in English, but she is able to speak, write, and read Bosnian. (Tr., pp. 11, 13)

Tyson hired Nuhanovic in May 1998. (Tr., pp. 12-14; Ex. 11, p. 42) Nuhanovic last worked at Tyson on March 10, 2017. (Tr., p. 14) Nuhanovic has not worked for any other employer. (Tr., p. 14; Ex. A, p. 3) While she was living in Bosnia, Nuhanovic was a homemaker. (Tr., p. 14; Ex A, p. 3)

Nuhanovic is right-hand dominant. (Tr., p. 48) As discussed above, Nuhanovic has established she sustained permanent injuries to her bilateral upper extremities (carpal tunnel syndrome), and left shoulder while working for Tyson.

Dr. Gorsche, assigned a three percent permanent impairment to the right upper extremity, a seven percent permanent impairment to the left upper extremity, and imposed permanent restrictions of no use of vibratory tools bilaterally. (JE 1, p. 13; JE 7, p. 4) Under Table 16-3 of the AMA Guides, a three percent upper extremity converts to a two percent whole person impairment, and a seven percent upper extremity impairment converts to a four percent whole person impairment.

Dr. Knudson causally related Nuhanovic's left shoulder condition to her work, but he did not provide a permanent impairment rating. Dr. Mathew is the only physician who provided a permanent impairment rating. Dr. Mathew agreed with Dr. Knudson Nuhanovic's left shoulder condition was causally related to her work for Tyson, and he assigned a five percent whole person impairment to Nuhanovic's left shoulder using Table 16-18 of the AMA Guides. (Ex. 1, p. 4) Dr. Mathew diagnosed Nuhanovic with a left shoulder rotator cuff tendinitis, chronic left shoulder pain, status post arthroscopy, and imposed permanent restrictions of avoiding lifting over ten pounds, repetitive pushing and pulling, repetitive overhead activities, and repetitive motion of the left shoulder. (Ex. 1, p. 4)

Nuhanovic has undergone two carpal tunnel surgeries to each upper extremity, and a surgery to her left shoulder. Nuhanovic testified she cannot extend her left arm above her head, and the most she can lift with her left arm is three pounds and she has to help lift items with her right. (Tr., pp. 50, 68) Nuhanovic stated she can do more with her right side, but she cannot lift a gallon of milk. (Tr., pp. 68-69) Nuhanovic's self-reported lifting limitations are under Dr. Mathew's ten pound lifting restriction. I do not find her testimony convincing on her lifting ability.

Nuhanovic also testified she has difficulty grabbing and maintaining control over things, she has pain and numbness in her left upper extremity, and she can only pick up objects with her right hand and assists with her left hand. (Tr., pp. 48, 69) Nuhanovic's daughter cleans and cooks for her, and purchases ready-made food Nuhanovic can warm up in the microwave. (Tr., p. 69) Nuhanovic's daughter also assists her with washing her hair and dressing. (Tr., p. 70) Nuhanovic's medical records do not document problems with self-care. The physicians who have treated her and examined her have not noted such limitations.

Nuhanovic last worked at Tyson on March 10, 2017. (Tr., p. 14) Nuhanovic has not worked for any other employer in her life. She has not applied for work with any other employer. Nuhanovic lives in Waterloo, Iowa, an urban area. No vocational evidence was presented at hearing. No evidence was presented concerning the labor market in the Waterloo area.

Nuhanovic has limited education. I found her to be articulate at hearing, through an interpreter. Considering all of the factors of industrial disability, I find Nuhanovic has sustained a sixty percent industrial disability. Given the lack of vocational evidence presented at hearing, I do not find Nuhanovic has met her burden of proving she is permanently and totally disabled under the statute or under the common law odd-lot doctrine.

In Evenson v. Winnebago Indus., Inc., the Iowa Supreme Court held that the healing period lasts until the claimant has returned to work, has reached maximum medical improvement, or until the claimant is medically capable of returning to substantially similar employment, “whichever occurs first.” 818 N.W.2d 360, 372-74 (Iowa 2016). Dr. Gorsche found Nuhanovic reached maximum medical improvement on January 9, 2017 and he issued an impairment rating of three percent for her right upper extremity, and she returned to work on January 10, 2017. (JE 7, p. 4) Thus, under Evenson permanency commenced on January 10, 2017. Nuhanovic is awarded 300 weeks of permanent partial disability benefits, at the stipulated rate of \$410.49, commencing on January 10, 2017.

III. Healing Period Benefits

The parties stipulated Nuhanovic has been off work since March 11, 2017. Nuhanovic seeks a running award of healing period benefits from March 11, 2017. Tyson contends she is not entitled to a running award of healing period benefits.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, “temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition.” Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to “partially reimburse the employee for loss of earnings” during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

“[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved.” Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). “Stabilization of the employee’s condition ‘is the event

that allows a physician to make the determination that a particular medical condition is permanent.” Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. The record supports Nuhanovic has sustained a permanent impairments to her bilateral upper extremities and left shoulder as a result of the work injury. Therefore, if she is entitled to temporary benefits, she is entitled to healing period benefits.

Iowa Code section 85.34(1) governs healing period benefits, as follows:

[i]f an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

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

The parties stipulated Nuhanovic has been off work since March 11, 2017. As analyzed above, Nuhanovic has established she sustained permanent impairments to her bilateral upper extremities (carpal tunnel syndrome), and left shoulder only. Drs. Gorsche and Mathew both found Nuhanovic is at maximum medical improvement. Nuhanovic has received permanent impairment ratings for the above conditions. Nuhanovic did not have any appointments scheduled for her bilateral upper extremities (carpal tunnel syndrome) or left shoulder at the time of the hearing. Nuhanovic is not entitled to a running award of healing period benefits.

During an appointment on September 25, 2017, Dr. Gorsche opined Nuhanovic had reached maximum medical improvement and imposed a permanent restriction of no use of vibratory tools bilaterally. (JE 1, p. 11) Nuhanovic continued to receive treatment for her left shoulder condition with Dr. Knudson. On October 5, 2017, Dr. Mathew performed an independent medical examination of Nuhanovic opining Nuhanovic had sustained a permanent impairment to her left shoulder, and assigning a permanent impairment rating of five percent. (Ex. 1) Dr. Mathew’s report does not provide the date Nuhanovic reached maximum medical improvement. (Ex. 1) The AMA Guides at pages 2 and 434-35, require a finding the party is at maximum medical improvement before a rating can be assigned. Given the lack of other evidence, I find Nuhanovic reached maximum medical improvement with respect to her shoulder condition on October 5, 2017, the day she was evaluated by Dr. Mathew. Pursuant to

the stipulation by the parties Nuhanovic has been off work since March 11, 2017, and Dr. Mathew's report, Nuhanovic is entitled to healing period benefits from March 11, 2017 through October 5, 2017, when she reached maximum medical improvement.

IV. Alternate Medical Care and Medical Bills

While not addressed in her post-hearing brief, at hearing Nuhanovic requested alternate medical care, which is disputed on the hearing report. Tyson, likewise, did not address alternate medical care in its brief. Nuhanovic seeks reimbursement for out-of-pocket expenses set forth in Exhibits 12 and 15.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1) (2017). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

As analyzed above, I found Nuhanovic has established she sustained permanent impairments to her bilateral upper extremities (carpal tunnel syndrome only) and left shoulder as a result of the work injury. Tyson has not wholly abandoned care in this case. Tyson is responsible for all causally connected medical bills, including the medical expenses set forth in Exhibits 12 and 15, for Nuhanovic's bilateral carpal tunnel syndrome and left shoulder only, including any necessary future care. Tyson is entitled to a credit for all medical bills paid through Nuhanovic's group health insurance offered through Tyson.

V. Costs

Nuhanovic seeks to recover \$100.00 for the filing fee, \$13.12 for service of the original notice and petition, \$101.70 for Nuhanovic's deposition, \$462.95 for Dr. Mathew's report, \$600.00 for Dr. Knudson's thirty minute conference fee, and \$462.95 for Dr. Manshadi's report. (Ex. 17)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides,

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

reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

No report was produced from Dr. Manshadi. No supporting documents were provided from Dr. Manshadi. (Ex. 17) Based on the failure to produce the report and supporting documentation, I decline to award the cost of Dr. Manshadi's alleged report.

The administrative rule allows for the recovery of a doctor's or practitioner's report, but does not expressly allow for the recovery of a conference. Therefore, I decline to award the \$600.00 cost of the conference with Dr. Knudson. The administrative rule expressly allows for the recovery of the remaining costs, including the cost of Dr. Mathew's report. Nuhanovic is entitled to recover the \$100.00 cost of the filing fee, \$13.12 cost of service of the original notice and petition, the \$462.95 cost of Dr. Mathew's report, and the \$101.70 cost of Nuhanovic's deposition.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant three hundred (300) weeks of permanent partial disability benefits, at the rate of four hundred ten and 49/100 dollars (\$410.49) per week, commencing on January 10, 2017.

Defendant shall pay the claimant healing period benefits from March 11, 2017 through October 5, 2017.

Defendant shall take credit for all benefits previously paid.


Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018).

Defendant is responsible for all causally connected medical bills for the claimant's bilateral carpal tunnel syndrome and left shoulder only set forth in Exhibits 12 and 15, and the defendant is entitled to a credit for all medical bills paid through the claimant's group health insurance offered through the defendant.

Defendant is assessed one hundred and 00/100 dollars (\$100.00) for the filing fee, thirteen and 12/100 dollars (\$13.12) for service of the original notice and petition, four hundred sixty-two and 95/100 dollars (\$462.95) for Dr. Mathew's report, and one hundred one and 70/100 dollars (\$101.70) for Nuhanovic's deposition.

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

Signed and filed this 21st day of August, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

J. Richard Johnson
Attorney at Law
1636 42nd St. NE
Cedar Rapids, IA 52402
rjohnson@jllawplc.com

Jason P. Wiltfang
Attorney at Law
905 Third Street SE, Unit 111
Cedar Rapids, IA 52401
jwiltfang@corridorlaw.legal

HLP/kjw

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.