BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

COLLINE MARQUETTE, Claimant, vs. JOHN DEERE DAVENPORT WORKS and JOHN DEERE CONSTRUCTION and FORESTRY COMPANY, Employer, Self-Insured, Defendants.	:	File No. 5055018 ARBITRATION DECISION Head Note Nos.: 1108.50, 1402.20

FILED
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WORKERS' COMPENSATION

STATEMENT OF THE CASE

Colline Marquette, ("Marquette") claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Davenport Works & John Deere Construction and Forestry Company, ("Deere") self-insured. Hearing was held on October 26, 2016 and November 14, 2016 in Davenport, Iowa.

Colline Marquette, Linda Johnson, and Steve DeTombe testified live at trial. The evidentiary record also includes joint exhibits 1-13, claimant's exhibits 14-42, and defendant's exhibits A-AA. Claimant's exhibit 36 was admitted for the limited purposes allowed under Iowa Code section 86.11. It should be noted by the parties that the exhibits contain unnecessary duplicates; citation will not be made to the duplicates.

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

The parties requested the opportunity for post-hearing briefs which were submitted on December 12, 2012.

ISSUES

The parties submitted the following issues for resolution:

1. Whether the claimant sustained an injury on November 7, 2013, which arose out of and in the course of employment?

2. Whether the alleged injury was the cause of permanent disability? If so, the nature and extent of disability claimant is entitled to receive.

3. Whether the alleged injury was the cause of temporary disability? Claimant is seeking temporary benefits from November 8, 2013 through June 25, 2015.

4. Whether claimant's claim is barred under Iowa Code section 85.23 for failure to provide timely notice.

5. Whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26.

6. Whether claimant is entitled to past reimbursement for medical mileage?

7. Assessment of costs.

FINDINGS OF FACT

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

Claimant Marquette has filed a petition alleging injury to her neck, right shoulder, and bilateral upper extremities either traumatically on November 7, 2013 or through cumulative trauma.

Marquette began working at Deere in Illinois in June of 2004. On June 9, 2004, she was examined by Jack Luke, M.D., at Occupational Health Services who certified that Marquette was medically qualified to perform the essential functions of the job at Deere. (Ex. 1) She worked there for approximately three months then transferred to Deere in Davenport, Iowa. Her job at the time of the alleged injury was the test stand job. Her duties included programming, filling, and testing loaders. A main portion of that job was to test everything on the loader to make certain that everything had been installed properly. Both at the time of her deposition and during the arbitration hearing Marquette provided great detail about her job duties. The transcripts are quite detailed and do not need to be revisited in great detail in this decision. (Testimony; Ex. Q) Steve DeTombe also provided testimony regarding the test stand job. (Testimony)

Marquette testified that she did have treatment for her back prior to this alleged injury. In 2010 and 2011 she sought treatment for her back with primary care physicians, a pain clinic, a Physician's Assistant, and Michael Dolphin, D.O. She also treated with Justin R. Seifert, D.C. for her low back; she saw him primarily for routine adjustments. He did take her off of work for her back for short periods of time. (Ex. 7) Marquette described her back as tolerable from March of 2011 until prior to this alleged injury. She could still perform her job; she said she had to work because she needed to provide for the family. Prior to November 7, 2013, Marquette had been experiencing pain and took Aleve a couple times a week. Once she began installing fenders she had to use Aleve on a daily basis. (Testimony; Exhibits 2, 3, 4, 5, 6, 7, and 9, pp. 1-5)

On November 7, 2013, Marquette reported to work. She clocked into work at 05:55 and clocked out at 14:36. (Ex. A) On that day, Marquette worked in the loader/tester/assembler position that she had been working in for over seven years. Although she had been in this position for over seven years she had only begun installing fenders a few weeks to one month prior to the alleged injury.

Marquette was working on a 644 end loader attempting to install a fender. She testified that when she installed a fender the top of the tire was approximately at her chin level. She would rest the fender on the top of the tire; the weight of the fender would then be on the tire. She was operating a cordless drill with her left arm and putting a fender bolt in at chest level when she heard and felt a pop at the back of her neck, near the base. This happened probably about an hour and a half after her shift began at 6:00 a.m. (Ex. Q, pp. 88, 91-92; Testimony) She felt pain in her upper back and neck. She testified that she had a difficult time remembering what happened immediately after the incident. However, she remembers she did not walk off the line, away from her supervisor, Steve DeTombe as her co-worker Lisa Johnson had testified.

Marquette testified that Steve was the one who drove her to the onsite medical clinic. Marquette estimates that she arrived at the onsite medical clinic approximately five to ten minutes after hearing and feeling the pop in her neck. She estimates she was at the clinic for an hour or so and then she gathered her personal belongings and went home. She did not return to her job duties that day.

DeTombe testified that Marquette never told him that she heard and felt a pop in the base of her neck while working. He does recall her telling him that installing fenders on the loaders was bothering her prior neck injury. However, he does not recall her mentioning anything about her shoulder bothering her. (Testimony)

Marquette testified that the nurse provided her with some ice and advised her that this was not work-related. Marquette testified that after November 7, 2013, she has not been able to work due to her pain; she has not worked anywhere since November 7, 2013 (Testimony)

Notably, Marquette did not work on Wednesday, November 6, 2013, because she needed to go to her chiropractor, Jason R. Seifert, D.C. His notes state that Marquette presented to his office with a chief complaint of cervical, right cervical, left cervical, right cervical dorsal, upper thoracic, left cervical dorsal, left posterior shoulder, left posterior arm, right posterior shoulder, right posterior arm, right posterior elbow and left posterior elbow discomfort. She rated her discomfort at a 7. She reported that the onset of pain was gradual and first noticed two days ago. The pain was aggravated by carrying, lifting, and working. The chiropractor recommended that she "avoid heavy lifting, avoid long periods of standing and all work." (Ex. 7, pp. 10-11; Testimony)

The John Deere clinic notes indicate that on November 7, 2013, Marquette brought in a note from Dr. Seifert returning her to work. She had been off work with neck pain. According to the Deere note, Marquette stated she had whiplash in 1996.

Since then she had intermittent neck pain, mostly while she was at work. She denied having an accident or acute event at work causing her pain. She did state that her neck pain was worse since lifting fenders at or above chest level. She also complained of neck and right upper arm pain with numbness and tingling in her second through fifth fingers on her right hand. The assessment was probable cervical radiculopathy with no evidence of work injury. The plan was for her to see her personal medical doctor. Until that time William Candler, D.O., restricted her to no work above chest/shoulder level and no lifting greater than 25 pounds. The note was entered into the system at 2:35 p.m. (Testimony; Ex. 2, p. 3)

On November 10, 2013, Marquette completed a WI Notice form. Marquette made no mention of hearing and feeling a pop at the base of her neck. Rather, she indicated that the cause of her disability was that she had whiplash and may have aggravated it. (Ex. B)

The first treatment Marquette sought outside of the Deere facilities after the November 7, 2013 date of injury was with Dr. Seifert on November 11, 2013. The notes indicate that her left cervical, cervical, right cervical, right cervical dorsal, upper thoracic, left cervical dorsal, left posterior shoulder, left posterior arm, left posterior elbow, right posterior shoulder, right posterior arm and right posterior elbow complaint felt the same since the last visit which was on November 6, 2013. Dr. Seifert noted Marquette was unable to work until her symptoms had resolved 100 percent. There was no mention of any work injury. (Ex. 7, p. 12)

Marquette returned to Dr. Seifert on November 18, 2013, and reported no improvement. He noted she was still unable to return to work and that a surgical consult would be necessary. (Ex. 7, p. 13) She was still unable to return to work on November 25, 2013 and December 2, 2013. (Ex. 7, pp. 14-16) On December 10, 2013, Dr. Seifert noted that Marquette still felt the same. He noted she was not able to work. He released her from his care and instructed her to follow up with a spinal surgeon. There was still no mention of a work injury. (Ex. 7, pp. 17-18)

On December 16, 2013, Marquette was seen at Medical Associates of Maquoketa, P.C., by Kimberly A. Thompson, D.O. Marquette came in complaining of a lot of neck pain. She noted that she had problems with this in the past and had an MRI three years ago that showed cervical disc bulge. She had been doing well but has had more persistent problems over the last month. She has been seeing the chiropractor, was taken off work, and it was recommended that she see a neurosurgeon. She reported numbness and tingling going down her back. She was wondering about getting more medications because she lost everything in a house fire a couple of weeks ago. She also complained of some pain in her low back with intermittent headaches. The doctor's assessment was cervical pain with bilateral paresthesias and radiculopathy to her upper extremities. A cervical MRI, Meloxicam, and Cyclobenzaprine were recommended. Dr. Thompson's notes make no mention of a work injury. (Ex. 6, pp. 7-8)

An MRI of the cervical spine was performed on December 23, 2013. The impression on the radiology report was degenerative changes, bulging discs, neural foraminal stenosis worse on the right side than the left and central canal spinal stenosis at multiple levels. (Ex. 8) Marquette returned to see Dr. Thompson again on January 8, 2014. The active problems were noted as depressive disorder and herniated disc, C6-C7. She was then referred to see Michael Dolphin, D.O. (Ex. 6, p. 9)

Marquette saw Dr. Dolphin, an orthopedic surgeon, on January 16, 2014. At this visit Marquette completed a medical history form. Marquette indicated that her chief complaint was her back. She reported the date of accident or onset of symptoms as 2011. She also completed a pain diagram noting that her spine ached and that she felt as though she had a cuff on her right arm and her arm felt numb down to the tips of her fingers. Dr. Dolphin noted that Marquette reported right arm numbness and tingling and neck pain. She reported that the numbness had been ongoing for about six months. Dr. Dolphin noted that he had seen her for similar complaints in 2010. Her symptoms were worse when she was lifting, sitting, or standing for a long period of time. Dr. Dolphin's assessment included cervical stenosis, cervical disc degeneration, cervical radiculopathy, and neck pain. He recommended that she quit smoking. He prescribed a Medrol Dosepak, physical therapy, and kept her off work for another four weeks. She was to return in four weeks and if no improvement then consideration would be given to performing a cervical discectomy and fusion from C4 to C7. Again, there was no mention of a work injury. Also, there was no mention of any problems with Marquette's right shoulder. (Ex. 10, pp. 6-11)

Marquette returned to Dr. Dolphin in mid-February. She had tried physical therapy, but had no improvement. She noted radiation between the shoulder blades and down her right arm. She noted she was worse with overhead work or if she is bending forward. She reported that she was working on quitting smoking. Dr. Dolphin's assessment was cervical stenosis, cervical radiculopathy, cervical disc degeneration, and cervicalgia. It was decided that they would proceed with getting insurance approval for an anterior cervical discectomy and fusion from C4 to C7 with plating. (Ex. 10, pp. 12-14)

On March 27, 2014, Dr. Dolphin performed a cervical discectomy and fusion. (Ex. 11, pp. 1-3) Marquette followed-up with Dr. Dolphin after the surgery. She continued to have a significant amount of pain across her shoulders and some radiation into her right arm. He refilled her oxycodone, gave her some stretching exercises, and released her to lift up to 20 pounds. (Ex. 10, pp. 15-16) She continued post-operative care with Dr. Dolphin. On June 20, 2014, Dr. Dolphin noted that Marquette was 12 weeks status post cervical fusion between C4 and C7. She was doing well until recently when she developed some radiating pain down her right arm into her hand. She also noted pain between her shoulder blades. She reported that the pain came on without any inciting events and sometimes bothered her for no reason. Dr. Dolphin ordered another MRI. (Ex. 10, pp. 17-22)

On June 23, 2014, a cervical MRI was performed. The impression was high-grade right foraminal stenosis at C7-T1 secondary to a right foraminal disk osteophyte complex. Moderate right foraminal stenosis at C6-7 was also noted. There was no abnormal cord signal intensity. (Ex. 9) She returned to see Dr. Dolphin who prescribed physical therapy and Medrol Dosepak. She was to remain off work. She continued to treat with Dr. Dolphin who noted she continued to smoke and was noncompliant with the use of her bone stimulator. At the end of July, Dr. Dolphin noted, "she has an attorney; and she is looking for disability. I told her we do not do disability for surgical patients." (Ex. 10, p. 28) By the end of September she reported that her chief complaint was right shoulder pain. Dr. Dolphin ordered an MRI of her right shoulder. (Ex. 10, pp. 23-31)

On October 2, 2014, an MRI of the right shoulder was performed. The MRI revealed partial tear of supraspinatus tendon with tendinopathy, probably partially caused by acromioclavicular joint hypertrophy; superior glenoid labrum shows abnormal signal suggesting a tear, and degenerative subchondral cyst formation in the humeral head. (Ex. 9, p. 3)

She returned to see Dr. Dolphin after the MRI. He assessed her with right shoulder rotator cuff tear, right shoulder acromioclavicular arthritis, and right shoulder pain. Marquette requested referral to a shoulder specialist. (Ex. 10, pp. 32-34)

On October 24, 2014, Marquette saw Tuvi Mendel, M.D., a shoulder specialist in the same office as Dr. Dolphin. Marquette reported that she had symptoms since November of 2013. Marquette reported that her symptoms started at work when she was putting a fender in a ladder and felt a popping sensation in her neck. Then she thought her shoulder was the cause. She reports that she always felt pain in her shoulder and scapula thoracic area. The pain would radiate into her anterior shoulder biceps region. He assessed her with right shoulder pain and discomfort with partial-thickness cuff tear and superior labral injury, AC joint degenerative changes with downsloping acromion, cubital tunnel syndrome. He offered initial conservative care including an injection with physical therapy and recommended an EMG. Marquette declined the injection. It is noted that Marquette completed a medical history form that listed the date of accident or onset of symptoms as November 2013 and marked the right shoulder on the pain diagram. This is not consistent with the medical information form she completed for Orthopaedic Specialists on January 16, 2014. (Ex. 10, pp. 8-10 and 35-40)

She saw Dr. Mendel in early November 2014, after the EMG. Dr. Mendel noted that the EMG revealed evidence of carpal tunnel type symptoms. He felt that a lot of her symptoms were related to the trapezius and medial border of the scapula trigger point musculoskeletal type pain. He also felt some of the symptoms were related to the neck with symptoms radiating down the back of her arm and into her hand. He referred her to Dr. Cobb for additional evaluation and possible management as it related to median and/or ulnar nerve pathology. (Ex. 10, pp. 36-43)

It appears the referral to Dr. Cobb was denied by insurance. She returned to see Jason Legare, ARNP with Dr. Mendel's office on November 11, 2014. She reported that her symptoms were worse. It was decided that she would proceed with right cubital and carpal tunnel releases. (Ex. 10, pp. 44-46)

On December 5, 2014, Dr. Dolphin authored a letter to Marquette's attorney. Dr. Dolphin stated that it was impossible for him to state within a reasonable degree of medical certainty whether Marquette's work duties either materially aggravated or accelerated her health problems. He noted that Marquette's cervical spine issues date back at least until September 1, 2010, when she had her initial MRI. He noted that he first saw Marquette on March 1, of 2011. (Ex. 26)

On December 9, 2014, Dr. Mendel performed right-sided carpal tunnel and cubital tunnel releases. (Ex. 11, pp. 4-5) Marquette continued to follow-up with Dr. Mendel's office following the right cubital and carpal tunnel release. She reported she was doing well. (Ex. 10, pp. 47-49)

On December 17, 2014, Marquette returned to see Dr. Dolphin. At that point she was 9 months post cervical discectomy and fusion. She reported that the recent right-sided cubital and carpal surgeries provided significant relief and she was eagerly awaiting left-sided surgery. She reported minimal neck pain and rated the pain as 2 out of 10. Dr. Dolphin noted that once Dr. Mendel released her from his care to return to work, she could return to work because there was no further need for him to keep her off work based on cervical spine findings. (Ex. 10, pp. 50-52)

She continued to follow-up with Dr. Mendel's office. On January 12, 2015, she reported doing very well. The doctor noted that all of her symptoms had essentially resolved on the right side. It was decided that they would proceed with surgery on the left. (Ex. 10, pp. 53-58)

On January 27, 2015, Dr. Mendel performed left-sided cubital tunnel and carpal tunnel releases. (Ex. 11, pp. 6-7)

Following the left side operation she continued to treat with Dr. Mendel's office. (Ex. 10, pp. 59-64) On March 3, 2015, Dr. Mendel performed right shoulder arthroscopic glenohumeral joint labral debridement and synovectomy, right shoulder open subacromial decompression, open acromioclavicular joint resection, open large retracted rotator cuff repair chronic, and open biceps tendon tenodesis. (Ex. 11, pp. 8-10) Marquette was kept off work following surgery. (Ex. 10, pp. 65-75) She was prescribed physical and occupational therapy for her right shoulder. Marquette did not attend her last four physical therapy appointments which were scheduled in later April into early May. (Ex. 12)

Marquette last saw Dr. Dolphin on June 24, 2015. He noted that overall she was 100 percent with some difficulty rotating her head when backing her car up or her end

loader up. He discharged her from his care and noted he would see her back as needed. (Ex. 10, pp. 76-78)

On June 26, 2015, Marquette saw Dr. Mendel for the last time. Marquette reported she was doing very well. She was performing a home exercise program for range of motion and strength. She thought she was ready to return to work but was currently caring for her father. The notes state that she would be allowed to return to work as soon as she was done caring for her father. Dr. Mendel recommended permanent restrictions of no lifting greater than 10 pounds at shoulder height or above. She may lift up to 30 pounds to waist level from floor. (Ex. 10, pp. 79-82) This was the last time Marquette saw a medical provider for her neck, right shoulder, or bilateral arms. (Ex. Q, p. 99; Testimony)

On August 15, 2016, Dr. Mendel signed a letter authored by defense counsel. By signing the letter he indicated that the last time he saw or heard from Marquette was June 26, 2015. He further indicated that he was not familiar with the details of Marquette's job at Deere and had never seen her job performed. Therefore, he could not state whether the job caused either her right shoulder injury or her bilateral arm injuries. Additionally, he indicated he did not know how, when, or where she had sustained a right shoulder rotator cuff tear. However, typically a job must be repetitive and labor intensive, with a lot of heavy lifting from waist to shoulder and a lot of overhead work, in order to cause a rotator cuff tear similar to the one Marquette had in her right shoulder. He did not recommend any additional treatment for Marquette. The restrictions that he set forth for her on June 26, 2015 were primarily for her right shoulder as opposed to her bilateral arms. He did not believe Marquette was permanently, totally disabled. He felt that she could physically perform any number of jobs. (Ex. K)

On September 15, 2016, Robert W. Milas, M.D., saw Marquette in consultation. (Ex. 15) Additionally, Dr. Milas reviewed medical and nonmedical records which were provided to him by claimant's attorney. Marquette denied any significant symptoms in her cervical spine or right shoulder prior to the event described on November 7, 2013. His impression was multilevel cervical disc disease with cervical stenosis resulting in radiculopathy and myelopathy, derangement of the right shoulder, bilateral carpal tunnel syndrome, and bilateral ulnar nerve entrapment at the level of the elbows. He placed Marquette in the DRE Cervical Category X and assigned 38 percent whole person functional impairment. Additionally, he assigned another 12 percent whole person functional impairment for the right acromioclavicular joint dysfunction at the shoulder level. He noted it would be impossible to separate impairment to the upper extremities from the carpal tunnel surgery and ulnar nerve surgery because that may well also lie within the realm of the cervical impairment. Using the combined values chart, the total impairment assigned was 45 percent of the whole person.

Dr. Milas noted that while Marquette may have had some pre-existing disease at the cervical level, right shoulder, both elbows and wrists, they did not become symptomatic until the event on November 7, 2013. Therefore, he felt that the event

either directly caused or made symptomatic the problem, which Marquette presented. However, Dr. Milas fails to explain the symptoms that Marquette was having on November 6, 2013, the day before the event. Dr. Milas noted that Marquette had worked for Deere for approximately nine and a half years; the last seven primarily in assembly work. He noted that on November 7, 2013, she was placing a fender on an end loader that weighed between 60-75 pounds when she experienced a popping sensation in her neck with sharp pain down her right upper extremity. Dr. Milas went on to state,

> I strongly feel that the event on November 7, 2013, with the patient's continued work exposure prior to that date directly caused or contributed to her multilevel dysfunction. Including the cervical spine, right shoulder, both elbows and both wrists. I do not feel that there is any likelihood of further improvement within the foreseeable future and do not feel that any further medical or surgical measures with [*sic]* result in significant improvement in her status. At this point in time, I feel that the patient should be restricted to a sedentary occupation.

(Ex. 15, p. 3)

On September 15, 2016, Dr. Milas sent a missive to claimant's counsel. He indicated that he had reviewed the MRI of the cervical spine dated September 1, 2010 and compared it the December 23, 2013 MRI. He noted that while both scans showed disc protrusions at the C4-C5, C5-C6, and C6-C7 levels the December 2013 scan showed those protrusions to be much more prominent than the earlier scan. Therefore, Dr. Milas opined that there was some exacerbation of the disc protrusion at the three levels. (Ex. 16)

On September 20, 2016, Richard L. Kreiter, M.D., authored a missive to claimant's counsel. His missive was based on his examination of Marquette and review of the records provided to him. He noted that Marquette likely had some pre-existing cervical disc issues prior to her work cumulative trauma. However, she still functioned well, but the cumulative activity as an assembler over approximately seven years accelerated the neck problem which led to the care from Dr. Dolphin.

With regard to her right shoulder, Dr. Kreiter noted that the pulling, pushing, lifting, and overhead work, materially aggravated the right shoulder problem which led to the care from Dr. Mendel.

Dr. Kreiter also stated that the repetitive pulling, pushing, and cumulative trauma created an entrapment and irritation of the ulnar nerve in the cubital tunnel areas at the elbow level. He felt that the cumulative trauma or repetition and force over seven year of assembly work irritated the median nerve at the wrist level, causing entrapment. He further opined that assembly work, including fender installation, caused cumulative trauma to the body which resulted in the treatment that was provided by Dr. Dolphin and Dr. Mendel.

Dr. Kreiter felt that Marquette did not have any permanent impairment with regard to the entrapment of either the median or ulnar nerves at her wrist and elbows. However, for the right shoulder were 13 percent whole person and 15 percent whole person for the cervical spine. With regard to restrictions, he noted that she needed to have work that did not require full range of motion of the neck. She should also avoid any rough-riding vehicles. For the right shoulder, no overhead work, and lifting with the right arm to the side and away from the body; two-handed lifting with the arms to the side, 35 pounds occasionally. Bench level work would be advised. She needed to avoid pulling, pushing, and polishing on the right. He noted that she would not be able to return to assembly or similar work. (Ex. 20 & 21)

On September 23, 2016, Christine C. Deignan, M.D., the Medical Director of Workers [sic] Compensation and non-occupational services sent a letter to defense counsel. In her report Dr. Deignan provided the history that Marquette provided to her on September 13, 2016. At that time, Marquette reported that the fusion was helpful but she continued to have numbness and tingling in both arms and right shoulder pain. She reported that her work was classified as an assembler but she worked in the inspection station. She described her duties as climbing in and out of the loader, filling fluids, and hooking up plates. She also reported that there was some overhead work. Dr. Deignan noted that Marquette adamantly denied any prior neck, shoulder, or arm problems prior to her neck popping at Deere. She did admit that she had previously seen a chiropractor but she had been in good health without any neck problems. (Ex. P)

Dr. Deignan provided her opinion regarding an impairment evaluation. She assigned 25 percent whole person impairment for the cervical spine. With regard to her upper extremities, the doctor noted that she had significant improvement of her symptoms after the surgical procedures for her cubital and carpal tunnel syndrome. The doctor's exam did not reveal any neurological deficits. She assigned zero percent impairment for both upper extremities. For Marquette's right shoulder, the doctor assigned 13 percent whole person impairment. Thus, the final impairment rating from Dr. Deignan for Marquette was 35 percent of the whole person. However, she noted that this impairment was not the result of occupational factors. (Ex. P)

Dr. Deignan included her job site visit in her report. In the conclusion section of her report she stated: "The inspection job is mostly performed sitting in the cab operating controls inside the cab. There is no repetitive work and no heavy lifting. The fender job is very light. Neither job has any repetitive elements." (Ex. P, p.73)

With regard to causation, Dr. Deignan noted that the history documented in the medical records does not support a specific incident at work when her neck popped. The doctor points out that the November 7, 2014 note, indicates there was no specific incident of injury. Also, she noted that Dr. Dolphin's January 16, 2014 note indicates that she had symptoms present for six months. Dr. Deignan explained that the conditions of spinal stenosis and disc dehydration were caused by age and accelerated by smoking. Also, osteophytes, bone spurs were caused by degenerative arthritis and are not the result of a single incident, nor are they repetitive motion injuries. (Ex. P, pp.

73-74) Dr. Deignan ultimately concluded that based on her history and examination of Marquette, her job site visit, and review of the medical records, it was her opinion that the physical problems were not the result of occupational exposures at Deere. (Ex. P)

Dr. Deignan recommended restrictions of no lifting over 35 pounds, no above head-height work, lifting at shoulder height limited to 10 pounds and no repeated twisting and turning of the neck. (Ex. P)

On September 29, 2016, Dr. Milas sent another letter to claimant's counsel. This was in response to claimant's counsel advising the physician that the fender weighed between 24 and 53 pounds; not 60-75 pounds as previously estimated. Dr. Milas again opined that while the patient may have had some element of pre-existing disease in the past, the level of symptoms were greatly increased with the event on November 7, 2013. Again, Dr. Milas' opinion was that this either directly caused or materially aggravated symptoms in the cervical spine to a degree not present before the event. He felt that the event on November 7, 2013 was the proximate cause of the symptoms that were demonstrated by Marquette. He also indicated that cumulative trauma with her duties as an assembler may have been a significant factor in her developing symptoms. He felt that the likelihood of significant improvement was little. He still felt she should be restricted to a sedentary occupation. This would imply a lifting restriction of 10 pounds, as well as prohibiting the patient from working with her upper extremities in awkward positions, hence this would certainly disqualify her from her prior level of employment. (Ex. 17)

On October 4, 2016, Dr. Seifert authored a summary regarding Marquette. He stated that from November 6, 2013 through her last visit on December 10, 2013 her diagnosis was the same. He stated his diagnosis was: cervicalgia, cervical segmental dysfunction, brachial neuritis or radiculitis, and thoracalgia. He stated that she never wanted to be off work except for a brief period of time such as a day or two. He noted his authorization to return to work without restrictions on November 25, 2013, was to be for a trial period at Marquette's request without restrictions. She felt if she had restrictions John Deere would not approve her return to work. He noted that Marquette did not improve at any time during his treatment from November 6, 2013 through December 10, 2013. However, during his treatment of her before November 6, 2013 she would always show improvement. Her treatment prior to November 6, 2013 was of a routine nature and he felt was generally due to normal wear and tear. (Ex. 24)

On October 18, 2016, defense counsel took the deposition of Debra Slater. Ms. Slater testified that she had been a registered nurse since 1998. She is an employee of UnityPoint Health but she works at the medical clinic at John Deere Davenport Works in Davenport (Deere). Ms. Slater is the individual who entered the November 7, 2013 note into the Medgate system used by John Deere. She testified that she would not have told Marquette that her injury was not work-related because that is not her determination to make. She would leave that decision up to the doctor, Dr. Candler, who saw Marquette on November 7, 2013. Ms. Slater also explained that section A of a WI paper was completed by the employee. Ms. Slater also testified that if a specific

injury is reported to her then protocol would be to complete the information in an injury packet, including an Occupational Health Incident Report. (Ex. T)

On October 24, 2016, Dr. Mendel signed a letter authored by claimant's counsel. In doing so he indicated that he felt she likely sustained a material aggravation of her rotator cuff due to the job duties she performed at shoulder height or above, on an occasional basis, in combination with the impact on her rotator cuff from her bone spur, as well as the problems she had with her biceps tendon. Additionally, the doctor stated that she could lift up to ten pounds up to her waist level. She could also lift up to 10 pounds from waist to shoulder and shoulder to overhead briefly. (Ex. 27)

On November 18, 2016, Dr. Deignan issued another letter to defense counsel. Her letter was written after she had the opportunity to review Dr. Mendel's August 10, 2016, opinion. Dr. Deignan stated that she respected the opinions of Dr. Mendel. However, he has to rely on the information given to him regarding work and work activities. She felt that the job information provided to Dr. Mendel was not an accurate description of Marquette's work activities. (Ex. AA)

At hearing Marquette testified that she does not take any prescription medication for her neck, right shoulder, or arms. She takes over-the-counter Aleve or Tylenol as needed.

Marquette contends she sustained an acute injury arising out of and in the course of her employment on November 7, 2103. However, I find that claimant has failed to demonstrate by a preponderance of the evidence that she sustained an acute injury on November 7, 2013. While the undersigned recognizes that Marquette had pain prior to November 7, 2013 and was able to work through the pain until that date, there is simply a lack of support for an acute injury in the medical records following the alleged event. The first mention in the medical records of any type of work injury is not until August 20, 2014. Additionally, Marquette testified that she felt and heard the pop at the base of her neck approximately 60-90 minutes into her shift which began at 6:00 a.m. She said she was at the onsite clinic within 10 minutes of the popping, spent over an hour there, collected her belongings, and then went home. However, this is not consistent with Deere's medical plant records and her timecards. Additionally, the WI notice that Marquette completed three days after the alleged incident does not mention her feeling or hearing a pop at the base of her neck. There is no mention of any type of an acute event on November 7, 2013. I find that claimant has failed to carry her burden of proof to demonstrate by a preponderance of the evidence that she sustained an acute injury arising out of and in the course of her employment on November 7, 2013.

Alternatively, Marquette has alleged that she sustained a cumulative injury as a result of her work for Deere. There are several physicians who have rendered their opinions regarding causation in this matter. The medical records document that Marquette did have a pre-existing history of chronic problems in her neck, right shoulder, and bilateral arms.

Marquette has alleged a work injury to her cervical spine. Dr. Dolphin, an orthopaedic specialist, treated Marquette for her spinal condition. He stated it was "impossible for me to state within a reasonable degree of medical certainty whether Colline's work duties either materially aggravated or accelerated her health problems. Her cervical spine issues date back at least until September 1, 2010, when she had her initial MRI." Claimant's post-hearing brief argues that Dr. Dolphin was unable to provide causation because he was not provided all pertinent information. While this may be the case, the fact remains that Dr. Dolphin does not causally relate Marquette's cervical spine problems to her work for Deere. (Ex. 26)

Marquette relies on the opinions of Dr. Kreiter and Dr. Milas. Dr. Kreiter, who performed an IME at the request of the defendant, opined that Marquette "likely had some pre-existing cervical disc issues prior to her work cumulative trauma." He also noted that she had a whiplash injury in 1996 and was a chronic smoker which may be related to disc deterioration. However, he felt "she functioned well, but the cumulative activity as an assembler over approximately 7 years, accelerated the neck problem which led to the care by Dr. Dolphin." (Ex. 20, p. 1) Unfortunately, Dr. Kreiter merely makes broad, general statements causally connecting the cervical spine problems to cumulative activity; he fails to provide any explanation or rationale for his opinions. Further, Dr. Kreiter's letter does not demonstrate whether he has any understanding of Marquette's job duties. For these reasons I do not find the opinions of Dr. Kreiter to be persuasive. (Exhibits 20 & 21)

Dr. Milas indicated that Marquette's pre-existing disease at the cervical level did not become symptomatic until the event on November 7, 2013. This history is clearly erroneous as she received chiropractic care and missed work due to her cervical spine prior to November 7, 2013, including the day before the alleged injury. Dr. Milas makes a broad statement causally connecting the work at Deere to Marquette's neck conditions. However, his statement is based on an erroneous history and therefore, cannot be relied upon. He also stated that cumulative trauma associated with her assembler duties at Deere may have been a significant factor in her developing symptoms. It is not clear what "assembler duties" Dr. Milas is referring to or what he understood her duties to be. Furthermore, Dr. Milas' reports lack rationale or explanation as to how he arrived at his conclusions. For these reasons, Dr. Milas' opinions simply cannot be relied upon.

Defendant relies on the opinion of Dr. Deignan, who is employed by Unity Point at the on-site medical clinic at the Deere facility where Marquette worked. Dr. Deignan notes that Marquette has spinal stenosis and other degeneration. As previously noted, Dr. Deignan had the opportunity to observe claimant's job duties being performed. At the time of claimant's deposition and at the arbitration hearing there was an extensive amount of testimony provided regarding Marquette's job duties. Likewise, there is written documentation in evidence regarding her duties. I find that the statements Dr. Deignan made in her report regarding her observations of the job duties are consistent with the evidence as a whole. In the present case, Dr. Deignan does not causally connect claimant's neck problems to her work at Deere. Dr. Deignan provided the

rationale for her opinions in her detailed report. She explained that Marquette's conditions were degenerative changes and were not the result of a single incident, nor the result of repetitive motion injuries. I find that Dr. Deignan's opinions do have merit.

Claimant ultimately has the burden of proof in this case. While the undersigned recognizes that Marquette was able to perform her duties at Deere until November 7, 2013 and has not returned to work since that time, there is simply a lack of reliable, persuasive expert support for her claim. There is a lack of credible expert medical testimony to support Marquette's claim that she sustained an injury to her cervical spine arising out of and in the course of her employment with Deere. Marquette has failed to demonstrate by a preponderance of the evidence that she sustained an injury to her neck that arose out of or in the course of her employment with Deere.

We now turn to the issue of causation regarding Marquette's right shoulder claim. Dr. Mendel was the physician who operated on the right shoulder. As previously noted, Dr. Mendel has never seen Marquette's job performed. Initially, he indicated that he was unable to state if her shoulder condition was related to her work at Deere. He stated that typically a job must be repetitive and labor intense with a lot of heavy lifting from waist to shoulder and a lot of overhead work in order to cause a rotator cuff tear such as the one in this case. I find that the evidentiary record simply does not demonstrate that Marquette's job was repetitive and labor intense with a lot of heavy lifting from waist to shoulder and a lot of overhead work. In September of 2016, Dr. Mendel signed a check the box type letter authored by claimant's counsel. By doing so he indicated that he felt that Marquette's work at Deere caused a material aggravation of her rotator cuff due to the job duties she performed at shoulder height or above on an occasional basis. Unfortunately, this letter was written by claimant's counsel and not by the medical doctor. The doctor does not explain the rationale for his opinion which is not entirely consistent with his own prior opinion. For these reasons, I do not find Dr. Mendel's opinions to be persuasive. (Ex. K and Ex. 27)

Dr. Kreiter, who performed an IME at the request of the defendant, opined that the combination or risk factors, force, repetition, and position caused her impingement in her shoulder. He also felt the repetitive pulling, pushing, lifting, and overhead work, materially aggravated the right shoulder problem and led to the treatment Marquette received. Unfortunately, Dr. Kreiter's report fails to indicate what, if any, understanding he had of her job duties and the frequency in which she performed such duties. Also, he fails to indicate which job duties he believes caused a permanent worsening of her shoulder symptoms. Therefore, I do not find the opinions of Dr. Kreiter to carry much weight. (Exs. 20 & 21)

Again, defendant relies on the opinion of Dr. Deignan. Claimant argues that because Dr. Deignan is employed by Deere, her opinions are less than objective. While the undersigned recognizes this argument, there are other factors to consider as well. Dr. Deignan is the only medical expert in this file who performed a job site review and witnessed Marquette's job being performed. While she did not observe Marquette performing her job duties, she did observe another Deere employee perform the same

job duties as Marquette performs. In addition to the information Dr. Deignan obtained from the job site review she also examined Marquette and reviewed the medical records. On September 23, 2016, Dr. Deignan authored a detailed report, in her own words, setting forth her opinions and rationale for her opinions. Dr. Deignan concluded that her right shoulder issues were not work related. Dr. Deignan noted that there was only rare overhead reaching involved and that the job did not require repetitive work, nor did it require heavy work. She further noted that the act of attaching a fender to the loader would not put significant stress on the right shoulder. The record in this case demonstrates that Dr. Deignan had the most thorough understanding of Marquette's work duties. (Ex. P) I find that with regard to Marquette's right shoulder the opinions of Dr. Deignan carry the greatest weight. Therefore, I find that Marquette has failed to carry her burden of proof to show by a preponderance of the evidence that she sustained an injury to her right shoulder that arose out of and in the course of her employment.

We now turn to Marquette's bilateral upper extremity claim. Again, there are numerous physicians who have provided their opinions with regard to causation. Dr. Kreiter causally connected Marquette's problems with her upper extremities to her work at Deere. However, for the reasons set forth above I do not find his opinions to carry much weight. Broad and vague opinions without rationale are not persuasive. (Ex. 20 and 21)

Claimant also relies on the opinions of Dr. Milas who causally connects the problems in her elbows and wrists to her work at Deere. However, his opinions lack rationale. Additionally, even Marquette admits that she and Dr. Milas only vaguely discussed her job at Deere. Again, broad and vague opinions without rationale are not persuasive. For the reasons set forth above, I do not find the opinions of Dr. Milas to be persuasive. (Ex. 15)

Defendant again relies on the opinions of Dr. Deignan who does not causally connect Marquette's work activities to the problems in her elbows or wrists. Marquette contends that her bilateral upper extremity problems were caused by repetitive motion due to her work duties. Dr. Deignan sets forth her understanding of Marquette's job duties, including how often particular duties are performed. She specifically noted that neither the inspection job nor the fender job required repetitive motion. Additionally, she sets forth the rationale for her opinions. She noted that by the time Marquette had been diagnosed with carpal and cubital tunnel she had already been off work for one year and that Marquette had non-occupational risk factors for these syndromes. I find that with regard to Marquette's claim for injury to her upper extremities the opinions of Dr. Deignan carry the greatest weight. Therefore, I find that Marquette has failed to carry her burden of proof to show by a preponderance of the evidence that she sustained an injury to her upper extremities that arose out of and in the course of her employment. (Ex. P)

Because claimant was not successful in her claim I find that an assessment of costs is not appropriate in this case.

Because claimant failed to carry her burden of proof to show that she sustained an injury that arose out of or in the course of her employment with Deere all other issues in this matter are rendered moot.

CONCLUSIONS OF LAW

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

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

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Based on the above findings of fact, I concluded that claimant failed to carry her burden of proof to demonstrate by a preponderance of the evidence that she sustained an injury which arose out of and in the course of her employment with Deere. Although Marquette did not returned to work since the alleged date of injury, I concluded that there was simply a lack of reliable, persuasive expert evidence to support her claims. There is a lack of credible expert medical testimony to support Marquette's claims of injury. Marquette has failed to carry her burden of proof to show that she sustained an injury that arose out of or in the course of her employment with Deere.

Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I concluded that because claimant was not successful in her claim it was not appropriate to assess costs against the defendant. Each party shall bear their own costs.

ORDER

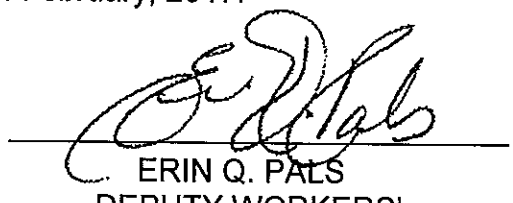
THEREFORE, IT IS ORDERED:

Claimant shall take nothing further from these proceedings.

Each party shall bear their own costs.

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

Signed and filed this 14th day of February, 2017.



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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.