BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JUN 12 2018
WORKERS COMPENSATION

MIA BARTELS, Claimant, vs. CITY OF CORALVILLE, Employer, and IMWCA, Insurance Carrier, Defendants.	File Nos. 5054758, 5054759, 5054760 ARBITRATION DECISION Head Note Nos.: 1108

STATEMENT OF THE CASE

The claimant, Mia Bartels, filed three petitions for arbitration and seeks workers' compensation benefits from City of Coralville, employer, and IMWCA, insurance carrier. Both parties were well-represented. The claimant was represented by Jean Mauss. The defendants were represented by Jane Lorentzen.

The matter came on for hearing on May 11, 2017, before deputy workers' compensation commissioner, Joe Walsh, in Des Moines, Iowa. The record in the case consists of Joint Exhibits 1 through 19, Claimant's Exhibits 20 through 33 and Defense Exhibits A through K. The claimant testified under oath at hearing, in addition to Barry Bedford, former Police Chief for the City of Bedford. Tammy Isley Guenther was appointed to serve as the court reporter. The matter was fully submitted on August 23, 2017, after excellent briefing by the parties.

ISSUES

File No. 5054758:

The parties submitted the following issues for determination:

1. The nature and extent of claimant's permanent partial disability, including the appropriate commencement date for benefits.

2. Whether the claimant is entitled to the medical expenses set forth in Claimant's Exhibit 32.

3. Whether the claimant is entitled to reimbursement for her independent medical examination (IME) set forth in Claimant's Exhibit 33.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.

2. Claimant sustained an injury which arose out of and in the course of employment on November 4, 2013.

3. Temporary disability/healing period and medical benefits are no longer in dispute. (While this was originally listed as a dispute on the hearing report, claimant indicated in briefing that it was no longer disputed. This is interpreted as a stipulation at this time).

4. The weekly rate of compensation is $533.52.

5. Defendants have paid and are entitled to a credit of 41.145 weeks of compensation (permanent partial disability).

6. Affirmative defenses have been waived.

7. There is no dispute concerning the credit to which defendants are entitled.

File No. 5054759:

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury to her right shoulder which arose out of and in the course of her employment on January 16, 2014.

2. While the defendants admit claimant sustained a temporary injury to her right arm on January 16, 2014, they deny that there was any injury which caused any temporary or permanent disability. Medical causation is disputed.

3. Whether claimant is entitled to healing period benefits commencing January 17, 2014, through August 11, 2014.

4. Whether claimant is entitled to any permanency benefits, and if so the nature and extent of her disability.

5. Whether the claimant is entitled to the medical expenses set forth in Claimant's Exhibit 32.

6. Whether the claimant is entitled to reimbursement for her independent medical examination set forth in Claimant's Exhibit 33.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. Claimant sustained an injury to her right arm which arose out of and in the course of employment on January 16, 2014.
3. The weekly rate of compensation is $535.34.
4. Affirmative defenses have been waived.
5. There is no dispute concerning the credit to which defendants are entitled.

File No. 5054760:

The parties submitted the following issues for determination:

1. Whether the claimant sustained an "environmental exposure" injury which arose out of and in the course of her employment on July 25, 2014.
2. Whether the alleged injury is a cause of any temporary or permanent disability.
3. Whether the claimant is entitled to healing period benefits commencing on July 26, 2014, through June 21, 2015.
4. Whether claimant is entitled to any permanency benefits, and if so the nature and extent of her disability.
5. Whether the claimant is entitled to the medical expenses set forth in Claimant's Exhibit 32.
6. Whether the claimant is entitled to reimbursement for her independent medical examination set forth in Claimant's Exhibit 33.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.
2. The weekly rate of compensation is $542.58.
3. Affirmative defenses have been waived.
4. There is no dispute concerning the credit to which defendants are entitled.

FINDINGS OF FACT

Mia Bartels was 50 years old as of the date of hearing. (Transcript, page 14) She graduated from Kirkwood Community College with a two-year degree in criminal justice. (Tr., p. 15) She is right-handed. Her past work history includes working as a housekeeper, providing childcare services and work as a security guard. From 1988 to 1992 she worked as a "special deputy" for Washington County, patrolling the streets and serving at public events. She has provided security services for businesses as well.

Ms. Bartels testified live at hearing. I find her to be generally credible. She was a good witness. Her testimony was consistent and straightforward. She testified much like a police officer. While I ultimately do not agree with all of her conclusions or opinions regarding her condition, the testimony she provided was easy to understand and consistent with her prior statements as well as the medical records. There was nothing about her demeanor which caused me any concern about her truthfulness.

In November 2003, Ms. Bartels began working for the City of Coralville as a Community Service Officer. (Tr., p. 16) Her job consisted of two primary components: (1) She ran the evidence room and (2) she assisted with other Coralville Police Department operations, including animal control. She testified that she loved her job and I find this to be true. Her job required her to lift up to 50 pounds. (Claimant's Exhibit 27, p. 1097)

Ms. Bartels worked primarily in the City of Coralville evidence room. This room is a small, concrete basement room with no windows and poor ventilation. (Tr., pp. 42-44, 55)

Facts Surrounding Alleged Environmental Exposure Injury

In March 2000, prior to the claimant even beginning employment with the City, an industrial hygienist performed an evaluation of the evidence room which was mailed to the City Administrator, Mike Funke. (Cl. Ex. 23) The industrial hygienist documented a number of problems with this room. She noted that the room was "not originally designed for human occupancy." (Cl. Ex. 23, p. 1026) She noted that the room did not have a good air supply and no effective ventilation. She noted that the room flooded in the floods of 1993, but the room was never cleaned. "Mold and mildew was evident on the cinderblock wall farthest from the entry door, and on the cardboard storage boxes." (Cl. Ex. 23, p. 1026) She noted the room had a noticeable odor. She made the following recommendations.

> Based on the fact this room 1) has no effective ventilation and 2) contains multiple sources of indoor pollutants, I recommend that another location be found for storing and cataloging evidence. The location should have adequate makeup (outdoor) air supply and exhaust. Ideally, the community service officer's cataloging task would be restructured so that s/he would not have to spend extended periods in the evidence room.

(Cl. Ex. 23, p. 1027) Alternatively, she recommended an extensive cleaning protocol and installation of an improved air ventilation and exhaust system. The hygienist reiterated multiple times that her primary recommendation was to relocate the evidence room. (Cl. Ex. 23, pp. 1027-28)

The City did not relocate the evidence room. Rather than relocation, the City, led by Mr. Funke, chose to retrofit the evidence room with an air handling system and disinfect the room. (Cl. Ex. 24, pp. 1032-36) I find that this was a sincere effort by the City to remediate the problems in the evidence room. Again, all of this was done before claimant even began working for the City.

Barry Bedford was Police Chief for the City of Coralville for 28 years. He retired in February 2017, just prior to hearing. He testified live and under oath at hearing. He is a highly credible witness. Mr. Bedford was involved in the 2000 remediation efforts and acknowledged that problems in the evidence room recurred. (Tr., pp. 187-89)

As set forth above, Ms. Bartels began working for the City in November 2003. She testified that she spent, on average, 70 to 80 percent of her day in the evidence room. (Tr., p. 47) She further testified that she started experiencing symptoms she related to environmental exposure "early on" after she started working for the City. (Tr., p. 85) The symptoms progressed over time. By 2008, her email correspondence with both Chief Bedford and Mr. Funke convincingly documented ongoing environmental problems in the evidence room. In particular, between 2008 and 2010, there are numerous documented instances of excessive moisture, ventilation issues and the existence of mold. (Cl. Ex. 24, pp. 1039-51) In 2009, Mr. Funke offered to provide another dehumidifier to help with the moisture in the room. (Cl. Ex. 24, p. 1050) Over time, as her symptoms progressed and worsened, Ms. Bartels became more aggressive in documenting the issues in the evidence room.

In January 2013, Ms. Bartels took photographs of mold growth in the evidence room. (Cl. Ex. 31) The photographs depict water intrusion in the evidence room, peeling paint, as well as corrosion and rust on shelving. It is obvious that during this timeframe there was a longstanding, ongoing and significant issue with moisture in the evidence room. Ms. Bartels testified that, on several occasions, she had to re-tape boxes that had come loose due to the moisture. This is, again, confirmed in the photographs which depict boxes with loose tape.

The Iowa Division of Labor performed air sampling in July 2014. (Defense Ex. D) No hazards were found during this sampling. (Def. Ex. D, p. 55) Ms. Bartels testified that prior to the testing taking place, the employer turned up the air handling units. (Tr., pp. 83-84) She testified that the ventilation system was so loud that she could not talk on the speaker phone during this period of time. (Tr., pp. 82-83) I have carefully reviewed all of the occupational safety documents in the record for this time period.

Medical Treatment & Causation Opinions

Claimant's personal physician is Minyon Rittgers-Easton, M.D.

Dr. Rittgers-Easton has treated claimant since 2004 and prior to that, she treated with the same clinic, Mercy Family Practice Iowa City. I have reviewed these voluminous medical notes carefully. Claimant has been seen for a variety of health problems since 1994, some of them chronic or recurrent. She has dealt with fainting spells or light-headedness (syncope), urinary symptoms and infections, yeast infections, pelvis pain, neck pain, back pain and a variety of allergy type problems or symptoms even before starting for the City of Coralville. In March 2003, she was seen at Mercy Emergency for a rash and pruritis on her face, forehead, hands, wrists and groin. (Joint Ex. 2, p. 172) She started developing flushing in her face around the same time she started working in the evidence room for the City of Coralville, although this was felt to be related to the flu at the time. (Jt. Ex. 1, p. 8) She also began being treated for hypertension or high blood pressure. On top of all this, she has been treated for allergic reactions to some of the medications.

She continued to deal with these types of symptoms throughout the years, particularly after she started with the City. In May 2005, she presented with "poison ivy type dermatitis." (Jt. Ex. 1, p. 19) She returned with contact dermatitis/poison ivy in June 2005. (Jt. Ex. 1, p. 21) In January 2006, Ms. Bartels complained that "there is something going on that is not being diagnosed." (Jt. Ex. 1, p. 24) This appears to be in relation to a rash she had in her perineal area. In June 2007, she was evaluated for peritoneal dermatitis and a host of other symptoms were noted. (Jt. Ex. 1, p. 37) Again, it appears these symptoms were evaluated and treated in relation to her other ongoing health problems.

She had also been seen by other medical providers from time to time. For example, she treated with Towncrest Internal Medicine (David Kusner, M.D.), between 2004 and 2012 for a constellation of symptoms, including ongoing rash, hypertension, chronic vaginal infections, facial flushing, fatigue, headaches, psoriasis, possible MRSA, low back pain and anxiety. (Jt. Ex. 3) She was evaluated at the Mayo Clinic in 2006 for recurring vaginitis with low back pressure, episodic high blood pressure and red flushing face. (Jt. Ex. 5, p. 309) She was ultimately diagnosed with lichen simplex chronicus. (Jt. Ex. 5, p. 325) In 2008, Ms. Bartels sought treatment with Town Square Dermatology (Kristi Robson, M.D.) where she was treated fairly regularly for psoriasis and rash. (Jt. Ex. 6) These visits continued intermittently through 2014. She was also treated at the University of Iowa Hospitals and Clinics beginning in May 2008. (Jt. Ex. 7A) Mary Stone, M.D., initially diagnosed a "[p]soriasis vulgaris" and provided a number of treatments. (Jt. Ex. 7A, p. 373) She continued to treat intermittently with Dr. Stone over time as well.

In November 2008, she was evaluated at Town Square Allergy & Asthma (Marta Little, M.D.) who performed a variety of allergy tests. (Jt. Ex. 9) Ms. Bartels described her work environment (damp basement and mold) to Dr. Little in detail. (Jt. Ex. 9, pp. 535-36) "She reports illness that correlates with her work and dissipated when she was away from work recently." (Jt. Ex. 9, p. 539) These symptoms included eye/throat irritation, headache, occasional breathlessness, patchy dermatitis, elevated blood pressure, pounding pulse, and flushed face. "The primary question is if the illness is related to the work exposures. . . . As described to me, the workplace is a damp

basement room with visible mold growth. Certainly this level of mold exposure can trigger symptoms via allergy, irritation or possibly mold toxin exposures." (Jt. Ex. 9, p. 539) Dr. Little recommended allergy testing for Ms. Bartels. She also recommended an environmental assessment of the workplace. (Jt. Ex. 9, p. 539) It was also noted that many of the symptoms Ms. Bartels experienced were not typical to mold exposure, whether allergy-related or not.

In December 2008, allergy testing did show a mild allergy to a specific type of mold, Fusarium, "but overall the testing is underwhelming for allergy as the underlying cause of her symptoms. Her symptoms (flushed face, headache, dermatitis, and high blood pressure) are atypical for allergy." (Jt. Ex. 9, p. 544)

In February 2009, Ms. Bartels complained to Dr. Rittgers-Easton specifically about mold in the evidence room where she works.

> S Mia comes today to talk about her mold exposure at work. Recently ended up with an infected right shoulder. She had surgery on it. Postsurgically was off work for a substantial number of days; I believe 45 days. During that period of time, she "felt wonderful". She has not felt that good in years. She states that her face did not turn bright red. The patches of dry skin that she has on her arms and legs was gone. Her scratchy eyes, burning nose, and scratchy throat resolved completely. The perineal rash that she gets frequently was "perfect". She states that she works in the evidence room for the Coralville Police Department. She feels as though there is something "wrong downstairs". She reports that there is grey-black film on the floors, the metal doors, up the walls, and on a lot of the baggies. She states this happened after they dug out the foundation and then back filled it. She has been trying to get rid of as much stuff as she can, but is unable to do that. She has worked in the evidence room for about five years. Insinuates that there was a "lady in the basement" who is on disability who used to work in this area. She states that there is mold growing everywhere. When working in the evidence room, she tries to wear gloves, a gown, and a mask. She spends 90% of her time down in the evidence room. Discussed this with Dr. Cushner, who was instrumental in treating her shoulder infection. He sent her to the allergist for mold allergies. She was allergic to one of the molds. She was put on Advair. The allergist told her that "mold is not good".

(Jt. Ex. 1, p. 40) Dr. Rittgers-Easton stated that she did not "know much about sick buildings or mold infected buildings" but that she would research it. (Jt. Ex. 1, p. 40)

There was no immediate follow up for this. In November 2012, she was treated for psoriasis with probable psoriatic arthritis, cyclic fevers, flushing and increased infections including MRSA. (Jt. Ex. 1, p. 52) She returned to Dr. Rittgers-Easton in May 2013, complaining of the mold problem in the evidence room.

> S Mia comes today for evaluation and treatment of stress in her work environment. She works in the evidence room at the Coralville Police Department. She has been exposed to mold for years. She reports that multiple people have complained about it before she even got there. States this has been investigated before she even got there. She has documented pictures. She has been working there for ten years. Has known mold allergies and gets short of breath and wheezy.
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> Was seen and evaluated by Dr. Colleran for psoriatic arthritis and psoriasis. She is on methotrexate six pills every Tuesday. She is taking folic acid 1 mg per day, except for Tuesdays. She does think the rash is less pronounced and is not as raised or red. She is using cream on her arms. She has arthralgias and myalgias. Today, her hips hurt and she has to hold and if she holds it and then walks she has improved pain. She has got lumpy thickened joints in her fingers. She is fatigued. If she is out of the mold, she gets better. Once she is exposed to mold, she has mouth sores and burning in her mouth that is present all the time. Recently, she had the evidence room clean up. Had significant exposure. Also, was exposed to multiple other things. She states that the guns in cases get moldy and rust. They get rugs. There is mold on the shelves, floor, as well as cement block walls. There is a very high humidity.

(Jt. Ex. 1, pp. 52-53) Dr. Rittgers-Easton diagnosed psychological stressors, allergies to mold and psoriasis and psoriatic arthritis. (Jt. Ex. 1, p. 53) She took Ms. Bartels off work at this time. (Jt. Ex. 1, p. 54) Ms. Bartels returned on May 22, 2013, noting that her symptoms had improved. (Jt. Ex. 1, pp. 55-56)

Ms. Bartels returned in July 2013, however, with recurrent symptoms after she returned to the moldy environment. (Jt. Ex. 1, p. 59) From this point, Ms. Bartels followed up on with Dr. Rittgers-Easton on numerous occasions through her last day of work, July 25, 2014. (Jt. Ex. 1, pp. 62-105) The primary focus during the majority of these visits involved treatment for other conditions, such as concern that she had MRSA, nausea and vomiting, allergic reactions to medications, lower back pain and rheumatoid arthritis, however, in April 2014, Dr. Rittgers-Easton "encouraged her to continue to push the mold issue." (Jt. Ex. 1, p. 90)

Ms. Bartels saw a number of other physicians in the 2013-2014 timeframe as well. As mentioned before she continued to treat with Dr. Robson and Dr. Stone for psoriasis which was somewhat effective. Significantly, in July 2014, Dr. Rittgers-Easton referred her to the University of Iowa Hospitals and Clinics where she was seen by Fredric Gerr, M.D.

> Ms. Bartels is a 47-year-old Community Service Officer in the Coralville Police Department referred to the Occupational Medicine clinic by her primary care physician, Dr. Minyon Rittgers-Easton, for evaluation of skin problems, myalgia, arthralgia, fatigue, headaches, nausea and vomiting.

Ms. Bartels states that her symptoms began approximately 18 to 24 months ago. She states that she began to have skin lesions on her lower extremities, which have been diagnosed as psoriasis by her dermatologist, Dr. Kristi Robson, and by Dr. Mary Stone of UIHC Dermatology about 18 to 24 months ago. She has responded to treatment including topical corticosteroids and ultraviolet phototherapy, but her skin lesions have not fully cleared. She was tried on a course of methotrexate and is currently treated with Humira with some improvement.

Ms. Bartels also relates that she has daily pain in her hips and lower back. She pointed to her later thigh when she was asked to indicate where the hip pain was located. She states that she does not have hip pain every day. However, she has daily morning muscle aches and stiffness, which are relieved by soaking in a hot tub and remaining physically still. She also states that she has a sensation of swollen feet and does not tie her shoelaces due to this sensation. She denies ankle, finger, wrist, elbow, and shoulder pain. She describes her back pain as a "pressure" sensation in her low back.

She states that she has "flu-like" muscle aches "all over" on a daily basis, which improve with soaking in a hot tub. She also states that the pain is relieved by daily tramadol 500 mg BID and diclofenac 25 mg BID.

In addition, Ms. Bartels reports daily headaches. She does not wake up in the morning with a headache and begins to experience a headache around noon. She describes her headaches as pounding and throbbing pressure behind her eyes. She is bothered by bright lights during such episodes, for which she would wear sunglasses. She denies the visual sensation of flashing lights at the onset of such headaches. She notes that she has fewer headaches during days away from work. There is no temporal relationship between the headaches and her nausea or vomiting (see below). She has not had any treatment for the headaches.

Ms. Bartels states that she feels nauseated "all the time" which is associated with vomiting and dry mouth.

In addition, she states that she has a non-healing lesion inside her right nostril. In the last six months she has had five or six episodes of a facial rash. She produced a digital photograph on her telephone with a rash over the left side of her face and her left eye swollen shut. She notes blurry vision only associated with the rash.

Ms. Bartels reported that all of her symptoms decreased when she was off work for approximately 10 weeks for shoulder surgery. However over the last two years she has noticed that her symptoms gradually increased in frequency and severity.

(Jt. Ex. 7A, pp. 386-87)

Dr. Gerr evaluated each of Ms. Bartels' diagnoses in the context of her work environment. Regarding the psoriasis, he noted that regardless "of timing of onset, there is no known association between psoriasis and mold or damp spaces." (Jt. Ex. 7A, p. 391) Regarding her back pain, myalgia/arthralgia, as well as her nausea/vomiting, he also opined there is no known association between exposure to mold and such conditions. (Jt. Ex. 7A, pp. 391-92) Nevertheless, an evaluation of her workspace was recommended. (Jt. Ex. 7A, p. 392)

On or about July 25, 2014, Ms. Bartels testified that she simply could not go into work any longer. "I couldn't function anymore. I had tried to get out of bed one day, and I couldn't make my legs work. And I just told my husband to call them and tell them I couldn't come in to work." (Tr., p. 89) She continued to seek treatment after this date with Dr. Rittgers-Easton, as well as other providers, including Dr. Robson and Dr. Gerr. In September 2014, Dr. Gerr reiterated his opinion that he had "no basis to conclude that her psoriasis or multiple somatic complaints are associated with mold and dampness in her work environment." (Jt. Ex. 7A, p. 396) She was eventually evaluated at Psychiatric Associates in October 2014. She was diagnosed with major depression and generalized anxiety disorder with a significant social anxiety component. (Jt. Ex. 10, p. 561)

After she stopped working, Ms. Bartels was placed upon a leave of absence for a period of time and eventually terminated after her leave ran out. Her symptoms from this point forward did not improve. In other words, being out of the evidence room at this point did not improve her condition at all. She was evaluated by Andrew Ashby, M.D., in September 2014. He diagnosed inflammatory arthritis and rash and described her condition at that time as an "[e]nigmatic constellation of symptoms including: fatigue, severe xerostomia, malar rash, skin plaques, intense eye swelling, headaches, fingernail deformity. I am not sure this is mold related, and she doesnt [*sic*] seem to specific pulmonary involvement. I really think she needs a detailed immunologic workup." (Jt. Ex. 13, p. 623)

In November 2014, Ms. Bartels sought treatment from Janette Hope, M.D., a Board Certified Environmental Medicine physician in Santa Barbara, California. (Jt. Ex. 14) Dr. Hope performed some type of urine mycotoxins testing and reported it positive for trichothecenes. (Jt. Ex. 14, p. 642) She also took a full and detailed history from Ms. Bartels and performed a further evaluation in January 2015. After a medical workup, Dr. Hope provided a page and a half of various diagnoses for claimant's symptoms, most of which she related as connected to her exposure to mold in the workplace. (Jt. Ex. 14, pp. 649-50) Later, after neurobehavioral testing, Dr. Hope diagnosed toxic encephalopathy, secondary to mold exposure. (Jt. Ex. 14, p. 670) Dr. Hope has continued to treat the claimant from this time forward. She has provided a variety of treatments which have not been effective. She has opined that Ms. Bartels should stay off work.

In addition to the opinions contained in the records of the treating physicians, two

other physicians have provided expert medical opinions. Patrick Hartley, M.B., B.Ch., B.A.O., M.P.H., provided expert reports for the employer dated November 7, 2014, and November 15, 2016. (Jt. Ex. 7C) He is a highly-qualified professor of internal medicine at the University of Iowa. (Jt. Ex. 7C, pp. 404-21) He reviewed all of the appropriate documentation, including OSHA investigation. His opinions are quite simple and straightforward. "In summary, following my review of the extensive records which you have provided it remains my opinion, to a reasonable medical certainty, that I cannot attribute Ms. Bartels' multiple somatic complaints to her reported occupational exposures to mold or other hazards while working at the City of Coralville." (Jt. Ex. 7C, p. 403)

Sunil Bansal, M.D., provided expert opinion reports on behalf of the claimant in September and October 2016. Dr. Bansal is an occupational medicine physician. He performed an exhaustive review of the medical records. (Jt. Ex. 19, pp. 714-35) He provided a total of 26 diagnoses which he related to exposure to mold and mycotoxins for the City of Coralville. (Jt. Ex. 19, pp. 745-56) He justified his causation opinion as follows:

> In my medical opinion, Ms. Bartels incurred, on a cumulative basis, mycotoxin induced systemic toxicity from her work at the Coralville Police Department. The facts of the case support this opinion:
>
> A. As noted by multiple evidence photos, there was prevalent mold exposure in Ms. Bartels' immediate working environment for many years
>
> B. There was evidence of mycotoxins in Ms. Bartels' body as shown by the urine test that was positive for triochothecenes [*sic*]. This finding is usually from exposure to cool damp environments, similar to that of Ms. Bartels' work area.
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> . . . .
>
> C. Her constellation of clinical findings is characteristic of those found with systemic mycotoxin exposure. These findings including dermatologic problems (rash), neuropsychiatric problems, and fatigue.
>
> [Medical citations omitted]
>
> D. There is a strong temporal relationship that cannot be ignored.
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> I disagree with the reliance on the workplace air assessment in dismissing a workplace exposure to mold (mycotoxins) for Ms. Bartels. Of note is that the assessment only tested the air, and not surfaces. This fails to take into the consideration the mold contamination in dust and surfaces (often visible to the naked eye). Therefore it was an inadequate assessment.
>
> [Medical citations omitted]

> Therefore, based on the myriad of factors, the evidence is compelling that Ms. Bartels' incurred mold (mycotoxin) systemic toxicity from her cumulative work at Coralville Police Department.

(Jt. Ex. 19, pp. 744-45) He provided a ten percent whole body impairment rating and some permanent restrictions. (Jt. Ex. 19, pp. 746-47)

Prior to hearing, Dr. Gerr also provided detailed expert medical opinions to defense counsel based upon his treatment of Ms. Bartels. (Jt. Ex. 7E) These medical opinions are replete with detailed factual information provided by defense counsel and detailed responses from Dr. Gerr. I find his opinions in these reports to be compelling.

He reviewed the reports and opinions of Dr. Hope. He went through Dr. Hope's 16 conditions which Dr. Hope contended are related to mold or mycotoxin exposure. "First, with only two exceptions, the 16 ailments listed above are not illnesses or diseases. Rather they are symptoms which may be the result of any one of many diseases (and may also be reported in the absence of any disease whatsoever)." (Jt. Ex. 7E, p. 467) He went on. "Without knowledge of the actual disease that is the producer of the symptom, I believe it is almost always impossible to offer an opinion on the cause of the symptom, itself." (Jt. Ex. 7E, p. 468) He noted, for example, that arthralgias can be caused by rheumatoid arthritis.

"Second, in my opinion, there was no basis to diagnose 'encephalopathy' nor was there basis to label it 'toxic' and attribute it to mold." (Jt. Ex. 7E, p. 468) Dr. Gerr opined that cognitive testing alone cannot provide a basis for diagnosis of encephalopathy, or particularly toxic encephalopathy. He noted that anxiety and depression are known to impact the test performance (and claimant has been diagnosed with both severe depression and anxiety). He further opined that this diagnosis is not known to be caused by mold or mycotoxin exposure. (Jt. Ex. 7E, p. 469)

Dr. Gerr went on to attack the diagnosis of rhinitis, cough and wheeze. He noted that while it is possible for mold exposure to cause this diagnosis, the diagnosis had not been made properly. (Jt. Ex. 7E, p. 469) In fact, a thorough review of her medical records demonstrates these symptoms have not been prevalent throughout Ms. Bartels' treatment over the years. Finally, Dr. Gerr noted a number of problems with diagnosing any conditions through the urine mycotoxin testing. (Jt. Ex. 7E, p. 469)

In November 2016, Dr. Gerr expanded on and clarified a number of his medical opinions. (Jt. Ex. 7E, p. 473) He also specifically addressed the IME of Dr. Bansal. His report was, again, compelling.

Having fully evaluated all of the medical treatment records and the expert opinions in conjunction with the other evidence in the record, I find that there is simply not enough evidence to connect claimant's conditions or symptoms with her exposure to mold at work. While this is a close case, there are simply too many unanswered questions for the claimant to meet her burden of proof. I find that Dr. Gerr and

Dr. Hartley have provided the most credible expert opinions in this complex, voluminous record.

Based upon the record before me, I think it is possible, even highly possible, that exposure to the damp moldy environment made Ms. Bartels sick. I cannot however state that this is probable, or more likely than not. Moreover, it is impossible to tell what illness specifically was caused. Ms. Bartels has had a variety of unpleasant chronic symptoms some of them dating back to before she even began working for the City of Coralville.

I note herein, that I am convinced that Ms. Bartels was exposed repeatedly to a damp and likely moldy work environment over a period of many years. She was probably exposed to mycotoxins. This was probably not good for her or other employees who work in the area. The work environment in the evidence room is probably not a healthy environment that a reasonable person would want to work in even with the changes the City has made to try to make it so. Even Dr. Gerr recommended a full review of the work environment. With the benefit of hindsight, it would probably have been wise for the City to have moved the evidence room as strongly recommended by an industrial hygienist in 2000. (Cl. Ex. 23, p. 1027) While the City made good faith efforts to remediate the issues in the evidence room, there is little doubt that the moisture and mold issues returned over time. Whether the work environment was truly safe or healthy, however, is not the issue before me. The issue is whether the claimant has met her burden of proof that she has a diagnosis or condition which meets the medical causation standards under Iowa law.

Ms. Bartels relies primarily upon three physicians to prove her case, Dr. Rittgers-Easton, Dr. Hope and Dr. Bansal. Dr. Rittgers-Easton is a primary care physician and lacks the requisite expertise in environmental medicine. Both she and Dr. Hope both took on fairly aggressive advocacy roles on behalf of the claimant. This is likely because they were reasonably concerned about the claimant's perceived unhealthy work environment. Dr. Bansal also lacks the necessary expertise in environmental medicine. He did put together a reasonable case for medical causation for the diagnosis of "mycotoxin induced systemic toxicity." (Jt. Ex. 19) He did provide medical research to back up his opinions. The problem is, he is clearly not the most qualified expert in the record on this topic. The most qualified expert is Dr. Gerr.

Dr. Gerr was a treating physician, initially referred by Dr. Rittgers-Easton. Of all of the treating and expert physicians in this record, I find he has the most extensive qualifications to treat mold exposure. I have no reason to believe he has any type of bias against injured workers generally or the claimant particularly. In fact, he took the claimant's complaints quite seriously and performed a full initial workup. He provided adverse causation opinions in his treating records before ever making contact with defense counsel. He has been consistent and reasonable throughout the course of this treatment. In a nutshell, his opinion is that the medical science simply does not support

the finding of a link between the types of symptoms claimant has with mold exposure.[1] This is supported and bolstered by the opinion of his colleague, Dr. Hartley.

When viewing this case as a whole, the claimant has failed to meet her burden of proof that her exposure to mold and/or mycotoxins in the evidence room was a substantial factor in any specific diagnosis or the unfortunate constellation of symptoms she has experienced.

Facts Surrounding Alleged Left Shoulder and Right Arm/Shoulder Injuries

Prior to November 14, 2013, Ms. Bartels had a healthy left shoulder. On November 14, 2013, while attempting to lift a safe, she lost control of it. In an effort to prevent the safe from dropping to the floor, she caught it with her left arm, experiencing immediate pain. Initial treatment was provided by Daniel Fabiano, M.D. (Jt. Ex. 11, p. 600) An MRI was quickly performed which demonstrated a tear of the rotator cuff and a rupture of the bicipital tendon in her arm. She was referred to Mark Mysnyk, M.D., at Steindler Orthopedic Clinic.

On January 16, 2014, Ms. Bartels suffered a new injury to her right arm. She testified that her left arm was immobilized at the time and she was working light-duty. She was performing animal control duties. A co-worker handed her a small dog on a leash, which was wrapped around her right arm. The dog jumped into the truck "like a little rocket", jerking her right arm forward. Ms. Bartels testified that she developed symptoms in her right hand, elbow and shoulder. (Tr., pp. 30-31) She did report the injury immediately. In a January 20, 2014, email to her supervisor, Police Chief Barry Bedford, Ms. Bartels asked to be taken off work until her surgery. (Def. Ex. B, p. 10) She mentioned her injury on the right in this email. (Def. Ex. B, pp. 10-11) A formal injury report was not filed until June 2014. (Def. Ex. A, p. 3) It is noted that claimant had a right elbow injury in approximately 1995 due to a bicycle accident which fully healed. She had been treated for sepsis in her right shoulder which required surgery. (Tr., p. 25; see also Jt. Ex. 8, p. 509)

While she had reported the injury on the right side, she did not seek treatment for it until later. Ms. Bartels was receiving active treatment for her left shoulder injury at this time, but never mentioned the right arm/shoulder injury to Dr. Mysnyk until July 2014. (Jt. Ex. 8, 520)

Surgery was performed on January 23, 2014, to repair the left shoulder tear. (Jt. Ex. 8, p. 512) She subsequently underwent a standard course of post-operative treatment, including physical therapy. (Jt. Ex. 12) Dr. Mysnyk released her from care for her left shoulder on June 20, 2014. At that time, Dr. Mysnyk documented the following. "Mia still has some discomfort in her left shoulder with certain activities but

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[1] Having reviewed the medical evidence, including some of the article cited by the physicians, it is possible that the medical science is not complete at this time. We may learn someday that mold exposure does cause the type of complaints suffered by Ms. Bartels.

overall is getting steadily better. The discomfort that she gets tends to be on the posterior aspect of her arm. She can occasionally get a catching sensation also in her shoulder." (Jt. Ex. 8, p. 516) Dr. Mysnyk did release claimant to full-duty, however, he cautioned her against working with animals that may aggravate her left shoulder. (Jt. Ex. 8, p. 518)

July 1, 2014, was the first time claimant received any treatment for her right arm. She saw Dr. Mysnyk who diagnosed right lateral epicondylitis. "She has already tried the forearm strap. We are going to try a sleeve. I also suggested she try some nitroglycerin patches. She was given a prescription for these. She was shown some strengthening exercises and I emphasized stopping short of the point of pain." (Jt. Ex. 8, p. 521) He considered an injection and decided not to because the pain was not sufficiently localized to her right lateral epicondyle.

On July 26, 2014, Dr. Mysnyk documented that Ms. Bartels' work activities in animal control did aggravate both her left shoulder and her right arm and shoulder.

> Mia Bartels had called and talked to Laura Reeder 7/24/14 concerning her left shoulder and right elbow. I called her this morning (7/26/14). When I had seen her 6/20/14 (for her left shoulder postop visit) I had stated "She is not at 100% yet, and there may be certain activities involved with working with animals that may aggravate her left shoulder, but I believe at this time she can attempt to work with no restrictions." I then saw her for her right elbow lateral epicondylitis 7/1/14 and did not change those restrictions. She has been trying to trap animals and trying to hold the cages away from her body has aggravated her elbow and shoulder (more the elbow then [*sic*] the shoulder). Therefore, at this time, I believe she needs to go back on more specific restrictions. She should not be lifting/holding away from her body any traps whose weight by themselves or combined with an animal in them is more than 10 pounds.

(Jt. Ex. 8, p. 522)

She followed up with Dr. Mysnyk in August 2014, as recommended.

> Mia has been off work the last 2 weeks and has noticed significant improvement in both her left shoulder and right elbow. I believe if we can avoid irritating them for another 4 months, she'll be able to work with no restrictions concerning either one. Therefore we will continue the restriction that was last given of not lifting/holding away from her body any traps whose weight by themselves are [*sic*] combined with an animal in them is more than 10 pounds. She already has an appointment set up in December for follow-up of her shoulder and I will see her for both her shoulder and her elbow at that time.

(Jt. Ex. 8, p. 524) Ms. Bartels remained off work at this time for reasons unrelated to her shoulders or right arm. Nevertheless, her restrictions remained in place.

Ms. Bartels worked for the City of Coralville through July 2014. On July 25, 2014, she testified that she had reached her breaking point, primarily resulting from her other symptoms which she attributed to mold exposure. She could no longer get out of bed. "I just told my husband to call them and tell them I couldn't come into work." (Tr., p. 89) She was on leave for several months and she was ultimately terminated in November 2014, when she ran out of leave time. (Tr., p. 19; Claimant's Exhibit 28, page 1098) She testified she was too sick to return to work.

On December 19, 2014, Dr. Mysnyk noted that claimant was still suffering from right shoulder symptoms.

> Mia feels that her left shoulder and right elbow are doing pretty well. She does still have some pain in her right shoulder region, and she is not sure if that is the result of catching the safe (the original injury 11/4/13 when she noticed primarily left shoulder pain) or when the dog jerked forward. She is unable to lay [*sic*] on her right side at night.

(Jt. Ex. 8, p. 527) Dr. Mysnyk noted that she was doing fairly well, however, it was difficult to assess her impairment due to the fact she had not been working. (Jt. Ex. 8, p. 528) He sought an MRI of her right shoulder as well, which never happened. (Jt. Ex. 8, p. 528) In any event, he released her to attempt to work without restrictions regarding her left shoulder and right elbow.

Defendants then made a couple of attempts to assess her impairment despite Dr. Mysnyk's recommendations. In response to an inquiry from the adjustor, Dr. Mysnyk responded that he assumed the inquiry meant that the right shoulder was deemed denied. (Jt. Ex. 8, p. 530) He reiterated that he needed to see how her left shoulder was after she returned to work before he could assess impairment on the left shoulder or right arm. (Jt. Ex. 8, p. 530) Defense counsel then asked for an assessment. (Jt. Ex. 8, p. 531) He again reiterated his concern about doing a rating without seeing how she is able to perform at work, or alternatively have a functional capacity evaluation (FCE). Nevertheless, he provided a zero impairment for the right elbow and a 7 percent body as a whole rating for the left shoulder. (Jt. Ex. 8, pp. 533-34) He continued to insist she was not at maximum medical improvement for the right shoulder but mentioned in the letter that he was instructed to calculate impairments for the left shoulder and right arm, not the right shoulder. Dr. Mysnyk never specifically opined on medical causation for the right shoulder. An FCE was never authorized.

Dr. Bansal also assessed claimant's upper extremities, including the right shoulder. For the left shoulder, he essentially concurred with Dr. Mysnyk's diagnosis and provided a four percent whole body rating (lower than that of Dr. Mysnyk). For the right shoulder, he stated that her condition is "characteristic of rotator cuff pathology" and provided a five percent whole body rating, which he causally connected to the January 16, 2014, work injury. (Jt. Ex. 19, pp. 742-46)

For her left shoulder he recommended no lifting more than 15 pounds

occasionally, or 10 pounds frequently. He recommended no lifting more than 5 pounds above shoulder level and no overhead work. For her right shoulder, he recommended no lifting of more than 10 pounds occasionally and 5 pounds frequently, combined with no lifting whatsoever above shoulder level. (Jt. Ex. 19, p. 746)

The parties have stipulated that claimant suffered an injury which arose out of and in the course of her employment to her left shoulder on November 11, 2013. The parties have further stipulated that she suffered an injury to her right arm on January 16, 2014. I find that the claimant also injured her right shoulder in this injury. I find Dr. Bansal's opinion to be the most convincing expert opinion as to whether the January 16, 2014, work injury caused any damage to claimant's right shoulder.

CONCLUSIONS OF LAW

File No. 5054758 (Left Shoulder)

The first question submitted is the extent of claimant's industrial disability caused by her November 4, 2013, work injury.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Since the claimant's injury is to her left rotator cuff, it is to her body as a whole.

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

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

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

Having reviewed all of the evidence in the record, I find that claimant has suffered a 35 percent industrial loss as a result of her November 4, 2013, work injury.

Claimant was 50 years old at the time of hearing. She has suffered a 7 percent functional loss to her body as a whole resulting from her left shoulder rotator cuff injury and which was treated surgically. Her treating physician kept her on restrictions for an extended period of time. He did remove her restrictions to allow her to attempt to return to work, however, she never did so because she was off work for a constellation of symptoms she contended to be related to occupational mold exposure. Nevertheless, it is apparent Dr. Mysnyk was not fully committed to releasing claimant without any restrictions. Dr. Bansal's recommended restrictions are quite significant and prohibitive. They are actually comparable to the temporary restrictions Dr. Mysnyk had her working under during active treatment. Dr. Bansal recommended no lifting more than 15 pounds occasionally, or 10 pounds frequently. He recommended no lifting more than 5 pounds above shoulder level and no overhead work. These restrictions would, in fact, prevent claimant from working in her position with the City, although it is possible that, had claimant continued working, the position could have been modified.

Fortunately, the claimant is bright and well-educated. She has a two year degree in criminal justice from Kirkwood. Claimant has not looked for work as a result of her symptoms which she has contended are related to her mold exposure at work so it is somewhat more difficult or speculative to assess her loss of earning capacity from this particular injury. Considering all of the relevant factors, I find her industrial loss is 25 percent. This entitles claimant to 175 weeks of benefits commencing on March 6, 2014, the date claimant returned to work for the employer.

The next issue is medical expenses. The claimant has alleged entitlement to medical expenses as set forth in Claimant's Exhibit 32.

The employer shall 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. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Medical expenses under section 85.27 include payment of medical mileage under 876 Iowa Administrative Code section 8.1. Having thoroughly reviewed the documentation of expenses set forth in Claimant's Exhibit 32, I conclude that claimant is entitled to the expenses set forth therein. This includes $513.54 in medical mileage, as well as $42.30 in medical co-pays. Therefore the total medical expenses owed to claimant totals $555.84.

File No. 5054579 (Right Arm and Shoulder)

The defendants have conceded that claimant sustained an injury on January 16, 2014, which arose out of and in the course of her employment. They allege the claimant only injured her right elbow (which fully healed) in this incident and dispute

whether the claimant damaged her right shoulder. This is really a medical causation question.

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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); 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.

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).

Having reviewed all of the evidence in the record, I find that claimant has met her burden of proof that she sustained an injury which arose out of and in the course of her employment to both her right elbow and right shoulder on January 16, 2014. I am convinced by the IME report of Dr. Bansal, along with the claimant's credible testimony. Dr. Bansal opined that claimant suffered a rotator cuff injury to her right shoulder resulting from the incident where a small dog jumped from claimant's arms on that date. "The mechanism of injury, the forceful jerking with her arm, is consistent with her right shoulder condition. The mechanism is similar to the left shoulder pathology." (Jt. Ex. 19, p. 743)

The defendants effectively denied medical causation for this injury in their communications to Dr. Mysnyk, who was obviously frustrated at his inability to treat the claimant's condition. It is true, however, that the claimant did not initially report this injury or specifically seek treatment for a new injury. While she mentioned the incident to her employer in an email just a few days after it occurred, thereby alleviating any notice issue, she did not even report ongoing issues with the right shoulder to her physician until July 2014, and even then the circumstances of the incident were not entirely clear. While this provided the defendants a good faith basis for denying the claim, it does not change the fact that the greater weight of evidence supports both the occurrence of an injury to her right shoulder, as well as some permanent damage from the incident.

The next issue is whether the claimant suffered any temporary disability associated with this injury. In the hearing report, claimant seeks healing period benefits from January 16, 2014, through August 11, 2014.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App. 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In this case, the claimant was injured on January 16, 2014. She missed no work initially. She was never taken off work for this injury. Dr. Mysnyk sought to provide some treatment for her right shoulder, which was never granted. Ms. Bartels left work

on July 25, 2014, for reasons unrelated to her shoulder. Claimant is not entitled to healing period.

The next issue is whether claimant is entitled to any permanent partial disability benefits as a result of her January 16, 2014, work injury.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Since the claimant's injury is in her right shoulder, the disability is to her body as a whole.

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

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

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

Having reviewed all of the evidence in the record, I find that the claimant has suffered an additional ten percent loss of earning capacity as a result of her January 16, 2014, work injury.

I find it is more difficult to evaluate the full extent of this disability for a couple of reasons. First, very little treatment has been provided. On the one hand, this is not the claimant's fault. On the other hand, she did not truly seek treatment for this condition for several months after the injury. Overall, however, this factor weighs against a finding of a high industrial disability. Second, Ms. Bartels has not worked or sought work at all since July 2014. Dr. Bansal placed very significant restrictions on her right shoulder, however, the claimant has never really attempted to work at all since the injury was diagnosed and treated to the very limited extent it was treated.

At the time of hearing, however, nearly three years had passed. The claimant

still has symptoms in her right shoulder which have not resolved. The condition does appear to be permanent. She has a 5 percent body as a whole rating for this condition. I find she has suffered a 10 percent loss of earning capacity resulting from the work injury. This entitles her to 50 weeks of benefits commencing on the date she returned to work, January 17, 2014. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360, 372 (Iowa 2016).

The claimant is also entitled to $11.31 in medical mileage as set forth in Claimant's Exhibit 1, page 366.

File No. 5054760 (Mold Exposure)

The fighting issue is whether the claimant sustained an injury which arose out of and in the course of her employment from exposure to mold and/or mycotoxins in the evidence room for the Coralville Police Department.

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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); 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.

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

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

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

In this case, the claimant alleges she suffered a cumulative injury as a result of exposure to a damp, moldy working environment over a period of years. The question of whether the claimant sustained an injury is therefore closely related to medical causation.

For the reasons set forth in the findings of fact, I find that the claimant has failed to meet her burden of proof in this regard. It should be noted that I believe the claimant. I believe she sincerely believes that her constellation of awful symptoms relate to her

exposure to mold and mycotoxins. I find, however, that the defendants have superior medical evidence in this record; in particular the expert opinions of Dr. Gerr. For these reasons, I conclude that the claimant shall take nothing for this claim.

For All Claims

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

The claimant is entitled to her IME fee as set forth in Claimant's Exhibit 33, in the amount of $3,750.00.

Iowa Code section 86.40 states:

> Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> Costs. Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost

shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

The claimant is also entitled to the remainder of her costs, totaling $216.80.

ORDER

THEREFORE IT IS ORDERED:

File No. 5054758:

Defendants shall pay the claimant one hundred and seventy-five (175) weeks of permanent partial disability benefits at the rate of five hundred thirty-three and 52/100 dollars ($533.52) per week from June 20, 2014.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the permanency previously paid as set forth in Claimant's Exhibit 22.

Defendants shall pay medical expenses in the amount of five hundred fifty-five and 84/100 dollars ($555.84) as set forth in Claimant's Exhibit 32, pages 1361-62.

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

File No. 5054759:

Defendants shall pay the claimant fifty (50) weeks of permanent partial disability benefits at the rate of five hundred thirty-five and 34/100 dollars ($535.34) per week from June 20, 2014.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the permanency previously paid as set forth in Claimant's Exhibit 22.

Defendants shall pay medical expenses in the amount of eleven and 31/100

dollars ($11.31) as set forth in Claimant's Exhibit 32, page 1366.

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

File No. 5054760:

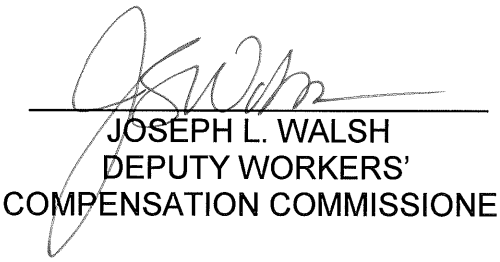
Claimant shall take nothing further.

For all files:

Defendants shall pay the full IME expense as set forth in Claimant's Exhibit 33 in the amount of three thousand seven hundred fifty and 00/100 dollars ($3,750.00).

Costs are taxed to defendants in the amount of two hundred sixteen and 80/100 dollars ($216.80).

Signed and filed this 12th day of June, 2018.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/srs

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.