



3. Whether claimant is entitled to temporary benefits from December 21, 2018 through May 12, 2019.
4. Whether defendant is responsible for past medical expenses.
5. Whether claimant is entitled to reimbursement for an independent medical examination (IME) pursuant to Iowa Code section 85.39.
6. Whether defendant is entitled to a credit pursuant to Iowa Code section 85.34(4) or 85.34(5).
7. Assessment of costs.

### FINDINGS OF FACT

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

Claimant, Nicholas Hernandez, alleges he sustained an injury to his right shoulder on October 20, 2018, which arose out of and in the course of his employment with John Deere Davenport Works ("Davenport Works"). On October 20, 2018, Mr. Hernandez was working in Department 798 in transmission subassembly. He began performing the transmission subassembly job in September of 2018; this is the job that he claims caused his right shoulder injury. (Transcript pages 11, 31-32; Defendant's Exhibit J, pp. 47, 49, 59)

Mr. Hernandez began working for Deere and Company in 2012 at the John Deere Harvester Works ("Harvester Works") plant in Illinois. He worked at Harvester Works until he was laid off in 2014. He was laid off for a few months and then he returned to work at the Dubuque Works plant in Dubuque, Iowa, where he worked as an assembler. He was laid off from Dubuque Works in 2016; he was eventually called back to work at Dubuque Works. Claimant then voluntarily transferred from Dubuque Works to Davenport Works. He began working for Davenport Works in July 2018. His first job at Davenport Works was fork truck driving. He began performing the transmission subassembly job at Davenport Works in September of 2018. (Def. Ex. J, p. 41)

Mr. Hernandez has a history of rheumatoid arthritis (RA), which was first diagnosed in 2016. He testified that his RA mostly affected the joints in his hands, wrists, and ankles. His RA causes pain and swelling. Mr. Hernandez sought treatment for his RA with Michael Miniter, M.D. He has been taking methotrexate for his RA since before he started working the transmission subassembly job. (Joint Exhibit 3, p. 33; Ex. J, p. 55; Tr. pp. 43-45)

Before Mr. Hernandez began performing the transmission subassembly job, he had problems with his right shoulder. As early as July of 2012, claimant sought treatment for right shoulder pain. He reported that he had injured it several days ago and had persistent pain since. Ibuprofen was not providing him with any relief. He was

assessed with tendonitis. An arm sling was recommended. He was prescribed Norco and prednisone. (JE1; JE2, pp. 2-6)

On March 1, 2016, Mr. Hernandez was unable to work due to pain and stiffness in his right shoulder. His right shoulder was so painful that he could not raise his right arm to put on a shirt. His rheumatologist started him on methotrexate. (JE3, pp. 28-30)

On March 30, 2016, Mr. Hernandez called John Deere to inform his employer that he was not able to work that day because he had pain and stiffness in his right shoulder. (JE3, p. 30) Mr. Hernandez saw Dr. Minter for reevaluation of his rheumatoid arthritis. He reported pain with his shoulders. He could not lift his arms over his shoulders without pain. The pain was worse on the left. Upon examination, the doctor noted mildly diminished abduction and medial rotation of the left shoulder with no local tenderness. On the right side, he had fairly marked diminution in abduction and medial rotation associated with pain. Dr. Minter felt his right shoulder pain was possibly related to rotator cuff injury. He felt it was unlikely that it was related to RA because all of his other joints had improved significantly following a Kenalog injection. Dr. Minter ordered an MRI of the right shoulder. (JE5, pp. 45-50)

Also in March of 2016, Mr. Hernandez sought chiropractic treatment for right shoulder pain. On March 2, 2016, Mr. Hernandez told the chiropractor that he had been on leave for approximately 6 months due to RA. He recently returned to work and developed right shoulder pain. He reported an onset of pain on February 29, 2016 and described it as a lifting injury. He described his pain as an 8 on a scale of zero to 10 with 10 being very severe or unbearable. On March 7, 2016, he reported that pain prevented him from throwing a softball over the weekend. (JE6, pp. 89-105)

Mr. Hernandez saw Dr. Minter again on March 18, 2016. He reported very minimal pain. He had full range of motion in his shoulders with no pain or tenderness. But by October of 2016, he reported increased pain in his shoulders and ankles. He had slightly diminished medial rotation bilaterally in his shoulders. Dr. Minter prescribed sulindac for his shoulder pain. In October of 2017, Mr. Hernandez demonstrated full range of motion for the left shoulder, but diminished abduction and medial rotation on the right. His right shoulder had been bothering him for over a year and the pain had never really gone away. The assessment included tendinitis of right shoulder. The doctor felt that he may have torn a rotator cuff. An MRI of the right shoulder was scheduled. (JE5, pp. 51-71)

An MR arthrogram of the right shoulder was performed on November 10, 2017. The reason for the exam was right shoulder pain and limited range of motion. No acute injury. A partial tear was revealed. The report states: "Mild to moderate supraspinatus tendinopathy with a partial undersurface tear involving the anterior half of the infraspinatus tendon through which contrast enters the tendon substance. This appears to involve 50% or less of the tendon thickness." (JE7, p. 106) The study also demonstrated some mild degeneration of the anterior/superior labrum. (JE7)

Mr. Hernandez returned to Dr. Minitier on November 15, 2017. He continued to have pain in his right shoulder, and to a lesser extent in his right. He reported that his job involved a lot of lifting and he felt this was aggravating his shoulders. Dr. Minitier's assessment was tendinitis of right shoulder with a partial tear which remains symptomatic. Mr. Hernandez was given an injection of Depo-Medrol 80 mg into the right supraspinatus tendon lining. The doctor noted that if his response to the injection was poor, then Mr. Hernandez may need a referral to an orthopedic surgeon. (JE5, pp. 72-76) Mr. Hernandez returned to work without restrictions and did not return for another five months.

Dr. Minitier saw Mr. Hernandez again on April 23, 2018. He reported that the November injection resolved his shoulder pain until April 22, 2018. He had limited range of motion on abduction and medial rotation with pain on the right shoulder. His shoulder pain affected his sleep. He was given another injection. (JE5, pp. 77-82)

On November 20, 2018, Mr. Hernandez returned to Dr. Minitier for reevaluation of his RA and shoulder tendinitis. He reported that he had recently started a new job with the same company and was now lifting heavy material and performing repetitive movements. A month or so ago, Mr. Hernandez woke up with right shoulder pain and was unable to put his shoulder above his head. Mr. Hernandez wants to see a surgeon to see what can be done. On examination, the shoulders had full range of motion. Tenderness was elicited over the right bicipital insertion. Dr. Minitier's assessment included symptomatic tendinitis of the right shoulder. Dr. Minitier stated, "This does not appear to be related to his rheumatoid arthritis but rather to excessive use from his work activities. It may be related to bicipital tendinitis though a previous MRI scan did show evidence of a partial tear of the infraspinatus tendon." (JE5, p. 87) Dr. Minitier referred Mr. Hernandez to Tuvi Mendel, M.D. for the right shoulder pain. (JE5, pp. 83-88)

Dr. Mendel saw Mr. Hernandez on November 28, 2018. Mr. Hernandez reported that he began having shoulder pain around 2 years ago without injury. He had been managing his symptoms with cortisone injections. The shot would usually provide significant pain relief for approximately 10 weeks. Dr. Mendel assessed him with right shoulder pain with rotator cuff tear, impingement syndrome, and a.c. joint arthropathy. Shoulder surgery was recommended. (JE8, pp. 108-09)

On December 11, 2018, Dr. Mendel performed right shoulder surgery. The following procedures were performed:

1. Right shoulder arthroscopic glenohumeral joint labral debridement and synovectomy.
2. Right shoulder arthroscopic biceps tendon tenodesis.
3. Right shoulder arthroscopic subacromial decompression and acromioclavicular joint resection.

4. Right shoulder arthroscopic rotator cuff repair.

(JE9, pp. 118-119)

After the surgery Mr. Hernandez continued to follow-up with Dr. Mendel's office. On May 6, 2019, he was 5 months out from his surgery. Mr. Hernandez was discharged from formal therapy to a home program. He was released back to work full duties effective May 13, 2019 and was told to follow-up as needed. (JE8, pp. 110-17; JE10) Mr. Hernandez testified that Dr. Mendel did awesome work. (Tr. p. 43)

Mr. Hernandez has alleged that he sustained an injury to his right shoulder as the result of performing the transmission subassembly job, Department 798, which he began in September 2018. When he began performing this job, he did not have any restrictions placed on his activities.

The transmission subassembly job is a full-time position. It typically took one hour and forty-five minutes to assemble each transmission; this was considered one cycle or split. Defendant's exhibit M consists of two discs containing six videos of an employee performing the job. Mr. Hernandez also watched the six job videos and stated that they accurately depict one cycle or split of the transmission subassembly job. He did not agree with a couple of aspects of the videos. First, Mr. Hernandez did not receive assistance from a co-worker on a torque, as shown in one of the videos. Second, Mr. Hernandez said that the work area in the videos was much cleaner than when he worked on the job. Fourth, Mr. Hernandez testified that he felt the pace of work in the video was slower than how it was typically performed. But overall, Mr. Hernandez felt the videos were accurate. The undersigned viewed the videos in their entirety. Exhibit M, 65 contains video 1 which is just shy of 47 minutes in length. Exhibit M, 66 contains videos two through six which total approximately 40 minutes.

The videos show that there are many different job duties and tasks during one cycle. The gentleman performing the tasks in the video is the person that trained Mr. Hernandez to perform that job. Mr. Hernandez also described his job duties in his deposition and during the hearing. The transmission was set on a metal fixture. The bottom of the transmission was approximately knee level and the top of the transmission was approximately shoulder or chin level. Mr. Hernandez agreed that the transmission assembly work was performed somewhere between his knees and his chin. He agreed that none of his work he did during a cycle involved reaching above his head. Mr. Hernandez performed approximately 20 torques, using approximately 20 different wrenches per cycle. Mr. Hernandez used a permanently stationed, large torque gun to perform 4 to 6 of the torques. The torques were performed at different levels, some down low, some at his midsection, and some at chest level. He also assembled around 60 fittings on the transmission during each cycle. These fittings ranged from knee level to chest level. Additionally, he had to assemble 20 rubber hoses as part of each cycle. These hoses ranged in height from knee level to chest level. Mr. Hernandez testified that the transmission subassembly job did not require any overhead work. (Def. Ex. J, pp. 47-56; Def. Ex. M; Tr. pp. 12, 34-41)

There are several doctors who have rendered their opinions regarding causation in this matter. Claimant relies on the opinions of Dr. Minter and Dr. Bansal. Defendant relies on the opinions of Mary Huesmann, ARNP, Dr. Mendel, and Dr. Allen.

At the request of his attorney, Mr. Hernandez saw Sunil Bansal, M.D. for an IME on September 27, 2019. Dr. Bansal who is board certified in occupational medicine, issued his report on December 30, 2019. Dr. Bansal set forth a thorough listing of the information he reviewed. Additionally, the report set forth his findings from the examination he conducted of Mr. Hernandez. On November 25, 2019, claimant's counsel sent a missive to Dr. Bansal which included the job videos. (Def. Ex. F, p. 17) These videos are not mentioned anywhere in Dr. Bansal's report, nor in his supplemental report. There is no indication that Dr. Bansal reviewed the approximately 90 minutes of job videos. (Cl. Exs. 2 & 7)

Dr. Bansal diagnosed Mr. Hernandez with right shoulder rotator cuff tear and biceps tendinopathy. Mr. Hernandez reported to Dr. Bansal that he developed right shoulder pain from his repetitive work at John Deere. Dr. Bansal stated, "Mr. Hernandez incurred a cumulative overuse injury to his right shoulder coming forward to October 20, 2018 from performing his job duties at John Deere, requiring him to work at jobs that would stress the rotator cuff." (Cl. Ex. 2, p. 17) He placed Mr. Hernandez at MMI as of May 6, 2019, which was the date of his last visit with Dr. Mendel. He restricted Mr. Hernandez to no lifting greater than 10 pounds over shoulder occasionally with the right arm, or 5 pounds frequently. No lifting greater than 25 pounds with the right arm. Avoid pushing or pulling greater than 50 pounds. Dr. Bansal utilized the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition and assigned 13 percent impairment to the upper extremity which is the equivalent of 8 percent whole person impairment. (Cl. Ex. 2) Dr. Bansal issued a supplemental report on January 7, 2020. Dr. Bansal disagreed with Dr. Allen's IME opinions. Dr. Bansal felt that Mr. Hernandez "[h]aving a downsloping acromion does not negate or dismiss the substantial contribution to his shoulder pathology from his repetitive work at John Deere." (Cl. Ex. 7, p. 33) Dr. Bansal does not state what tasks or duties he is referring to when he says "repetitive work." He fails to explain how the transmission subassembly job caused the right shoulder problems. Dr. Bansal simply makes a broad statement and fails to explain what transmission subassembly duties he is referring to when he says the injury was caused by repetitive work.

As noted above, in the November 20, 2018 clinical note, Dr. Minter noted: "Tendinitis of right shoulder – symptomatic. This does not appear to be related to his rheumatoid arthritis but rather to excessive use from his work activities. It may be related to bicipital tendinitis though a previous MRI scan did show evidence of a partial tear of the infraspinatus tendon." (JE5, p. 87) I do not find this statement to be terribly persuasive. The first time Dr. Minter made this notation was approximately two years before Mr. Hernandez began performing the transmission subassembly job. Additionally, it is not known what information was provided to Dr. Minter about the tasks and duties performed by Mr. Hernandez in the transmission subassembly job. Additionally, the statement is vague and conclusory. Dr. Minter felt that the right

shoulder was not related to his rheumatoid arthritis, but did not provide his rationale and basis for automatically concluding that it was related to his work.

Defendant relies on the opinions of Dr. Mendel, Dr. Allen, and Nurse Practitioner Mary Huesmann.

Dr. Mendel treated Mr. Hernandez for his right shoulder from November 28, 2018 through May 6, 2019. His treatment included right shoulder surgery on December 11, 2018. Dr. Mendel opined that “Mr. Hernandez’s work at John Deere Davenport Works neither caused nor significantly aggravated his right shoulder problems, including the right shoulder rotator cuff tear.” (Def. Ex. E, p. 10) He based his opinion on his understanding that Mr. Hernandez’s job did not involve any repetitive overhead work and that most of the wrench torqueing on his job occurred below waist level. Dr. Mendel stated that “[t]ypically a job must involve repetitive overhead work in order to cause a rotator cuff tear such as Mr. Hernandez had in his right shoulder.” Dr. Mendel released him to return to work without restrictions. (id.)

At the request of the defendant, Rhea J. Allen, M.D. conducted an IME on December 19, 2019. Dr. Allen stated:

To a reasonable degree of medical certainty, Nicholas Hernandez’ right shoulder condition, including rotator cuff tear, impingement syndrome, and acromioclavicular joint arthropathy were not related to his work at John Deere. His work at John Deere neither caused nor significantly aggravated his shoulder problems.

His job does not involve repetitive overhead work or sustained awkward shoulder postures, which would be risk factors for repetitive strain injury to the shoulder. There was no acute injury.

He is known to have prior right shoulder tendinitis and a rotator cuff tear. He had at least two prior corticosteroid injections to the right shoulder, and several IM corticosteroid injections for generalized rheumatoid arthritis flareups. The diagnoses regarding the right shoulder all pertain to impingement related to his anatomy, including the downsloping acromion, and degeneration.

(Def. Ex. H, p. 28)

Dr. Allen opined that Mr. Hernandez did not sustain any permanent impairment that is causally related to his work. She agreed with Dr. Mendel that he did not require any permanent restrictions for the right shoulder. (Def. Ex. H, p. 29) Dr. Allen reviewed the two DVDs containing job videos in their entirety. (Def. Ex. H, p. 34)

Nurse Practitioner Mary Huesmann visited and reviewed the transmission subassembly job on October 22, 2018. Mr. Hernandez informed Ms. Huesmann that on Saturday, October 20, 2018 his right shoulder felt sore. He denied a specific traumatic, jarring or jerking event to trigger or cause the discomfort while working. On November

18, 2018 he reported discomfort and stiffness reoccurring after he slept wrong. Ms. Huesmann noted that Mr. Hernandez had a prior MRI that demonstrated a tear. The present tear in the shoulder was deemed not work related. (Def. Ex. C, pp. 4-5)

I give the opinion of orthopedic surgeon, Dr. Mendel great weight. Mr. Hernandez was referred to Dr. Mendel by his rheumatologist; he was not referred there by his employer. Additionally, Dr. Mendel provided the rationale for his opinions. Dr. Mendel understood that claimant's job did not involve repetitive overhead work. The opinions of Nurse Practitioner Huesmann and Dr. Allen are also consistent with those of Dr. Mendel. I find their opinions to be persuasive. Both Nurse Practitioner Huesmann and Dr. Allen viewed the transmission subassembly job. I find that these opinions carry greater weight than the opinions of Dr. Bansal and Dr. Minitier. Neither Dr. Bansal nor Dr. Minitier provide their rationale for how the duties or which duties Mr. Hernandez performed in the subassembly job could have aggravated or caused his shoulder problems. Furthermore, it is not known how much each of these doctors understood about Mr. Hernandez's actual job duties.

Based on the testimony and record as a whole, I find claimant failed to carry his burden of proof to show that he sustained an injury to his right shoulder that arose out of and in the course of his employment with John Deere Davenport works on October 20, 2018.

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

Claimant has alleged that his right shoulder problems were caused by his transmission subassembly work at Davenport Works. Based on the above findings of fact, I conclude that claimant has failed to carry his burden of proof to demonstrate by a preponderance of the evidence that he sustained an injury to his right shoulder which arose out of and in the course his employment with Davenport Works on October 20, 2018. There is simply a lack of persuasive medical evidence to support his claim. Mr. Hernandez has failed to prove that he sustained an injury to his right shoulder as the result of his transmission subassembly work at Davenport Works.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case or by the Iowa Workers' Compensation Commissioner. 876 IAC 4.33. Because claimant was not successful in this claim I find it is not appropriate to assess costs. Each party shall bear their own costs.

All other issues have been rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing 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 8th day of May, 2020.



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ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served as follows:

Troy Howell (via WCES)

Andrew Bribriesco (via WCES)

**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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.