BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACOBO TRUJILLO,

Claimant,

vs.

SMITHFIELD FOODS, f/k/a FARMLAND FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,
Defendants.

File No. 5065724

ARBITRATION

DECISION

Head Note Nos.: 1108.50, 1402.20, 1402.40, 1803, 2907

STATEMENT OF THE CASE

Jacobo Trujillo, claimant, filed a petition in arbitration seeking workers' compensation benefits from Smithfield Foods, f/k/a Farmland Foods, employer and Safety National, insurance carrier as defendants. Hearing was held on July 27, 2018 in Des Moines, Iowa.

Claimant was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE12, claimant's exhibits 1-10, and defendant's exhibits A-F and I. Exhibits G and H were not offered by the defendants. The hearing was interpreted by Patricia Hillock.

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

The parties submitted post-hearing briefs on September 4, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained a work related injury to his neck on March 14, 2016 or in the alternative on November 9, 2015?

2. The extent of claimant's industrial disability.
3. Whether claimant reached Maximum Medical Improvement (MMI) on December 28, 2017 or April 19, 2018?
4. Whether claimant is entitled to payment of past medical expenses?
5. Whether claimant is entitled to reimbursement for an IME?
6. Assessment of costs.

FINDINGS OF FACT

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

At the time of the arbitration hearing Mr. Trujillo was 50 years old and lived in Denison, Iowa. Mr. Trujillo was raised in Mexico and speaks Spanish. His formal education consists of 11 years in Mexico. After 11 years he left school due to financial reasons. He moved to the United States in 1998. Mr. Trujillo testified that he can only speak a little English, just basic words and phrases, but he cannot fully converse in English. He cannot read or write in English. He does not know how to type or how to use a computer. (Testimony)

At the time of the injury Mr. Trujillo was working at Smithfield Foods ("Smithfield") which was formerly known as Farmland Foods. Mr. Trujillo was hired by Farmland Foods in 2011. Mr. Trujillo testified that prior to his employment with Farmland he had not had any injury to his shoulder or neck and did not have any restrictions for his shoulder or neck. Mr. Trujillo was hired as a Service injector in the pump area. He performed this job for approximately five years. His duties included getting meat from the cooler, bringing meat to the pump, and putting the meat in the dumper. His workmate lifted the meat, and dumped the meat. Mr. Trujillo waited for the bin to come down and then he would remove the empty combo and pallet. He also had to change the grinder which is a machine that grinds meat. The grinder needed to be changed every 45 minutes. He was also required to do some lifting. He had to lift pallets, some were plastic and some wooden. The wooden pallets could weigh anywhere from 70 to 80 pounds. He had to lift them up to six feet high. He testified he also had to carry a tub that was approximately 40 pounds.

On November 9, 2015, Mr. Trujillo and another worker had to move the grinder. The grinder weighs approximately 700-800 pounds and did not have wheels. The grinder was moved by pulling the machine. Mr. Trujillo was using his right upper extremity to pull the machine when he felt pain in his right shoulder and in his neck. On this particular day, the machine was more difficult to move and required more force. Mr. Trujillo reported the incident to his superiors who said the plant nurse would look at him that same day, but the nurse did not see Mr. Trujillo. Over the next few weeks, Mr. Trujillo continued performing his service injector job even though it was difficult for him. His symptoms persisted and got worse. Eventually, he decided to seek medical treatment on his own. (Testimony)

In early March of 2016, Mr. Trujillo went to the hospital in Denison where he saw James, Steele, M.D. The notes indicate a four-month history of right shoulder pain and decreased range of motion. He reported neck pain that was 8/10. X-rays of the neck revealed mild degenerative joint disease of the acromioclavicular ("AC") joint, and mild to moderate multilevel degenerative changes of the cervical spine, straightening of the normal lordosis, may be positional or related to muscle strain, and partial osseous fusion of C6-7 vertebral bodies and facets. (JE1, pp. 1-2)

Mr. Trujillo was referred to physical therapy by Dr. Steele. His first appointment was on March 3, 2016. Dr. Steele referred him with a diagnosis of subacute right shoulder biceps tendonitis and supraspinatus tendonitis with subacute right cervical paraspinous muscle strain. Mr. Trujillo told the therapist that he had neck and right shoulder pain of several years' duration. On Friday, of the previous week, he had some increase in left shoulder pain due to only using the left upper extremity at work. He was to attend therapy two to three times per week for four weeks. (JE1, pp. 3-4)

Mr. Trujillo saw Dr. Steele on March 15, 2016. Mr. Trujillo noted that physical therapy provided him with some improvement in his right shoulder, but he still had right shoulder pain. He reported he still had a lot of neck pain in the early morning. The doctor's impression was muscle spasm, cervical paraspinal, improved; supraspinatus tendinitis, right shoulder improved; Biceps tendinitis, right upper extremity, unchanged; degenerative joint disease, cervical spine. He recommended that Mr. Trujillo remain out of work until March 21, 2016. Dr. Steele recommended he follow-up as needed. (JE2, pp. 6-7)

The last physical therapy note is dated April 6, 2016. The note states that Mr. Trujillo was seen seven times from March 3, 2016 to March 23, 2016 for right shoulder treatment. He demonstrated some improvement in his range of motion. He did continue to have difficulty and pain with lifting and reaching. Mr. Trujillo did not show for his final therapy appointment on March 25, 2016. He was then discharged from therapy approximately two weeks later because the patient had not made any contact with the therapist. (JE1)

Mr. Trujillo saw Dr. Steele on May 4, 2016. He injured his right shoulder at work in November but did not go to the doctor until February because the plant would not send him anywhere for treatment. Finally, he decided to seek treatment on his own. Mr. Trujillo reported that his shoulder still bothered him. He was no longer doing any therapy. Dr. Steele's assessment was: (1) right shoulder supraspinatus tendinitis, deteriorated; (2) right upper extremity biceps tendinitis, deteriorated; (3) Right shoulder pain. Dr. Steele recommended that claimant remain out of work and recommended Tramadol and diclofenac. He also recommended follow-up with Dr. Tran, an orthopaedic doctor in Carroll. (JE12, pp. 14-15) Mr. Trujillo testified at hearing that Dr. Steele's treatment did help a little.

On May 26, 2016, the defendants sent Mr. Trujillo for treatment with Diane T. Tran, M.D., at Des Moines Orthopaedic Surgeons, P.C. (DMOS). Mr. Trujillo was seen for right shoulder pain. He reported a work injury of November 9, 2015. He was pulling a machine and felt a pull in his arm. He felt a pop and pain all the way down into his elbow. He reported the injury at work and kept working. He continued to have pain and continued to report pain in his shoulder, but no further evaluation was done at work. When he could not stand the pain anymore he went to see Dr. Steele. The doctor's assessment was adhesive capsulitis, right shoulder; long head of the biceps tenosynovitis, right; primary osteoarthritis, acromioclavicular joint, right; and current tobacco use. A subacromial and glenohumeral joint injection was performed. Dr. Tran also prescribed physical therapy. She assigned work restrictions to avoid repetitive motions grasping, pulling, etc. and no lifting over 1-pound overhead. He was to follow-up in six to eight weeks. (JE4, pp. 28-34) Mr. Trujillo testified at hearing that after receiving these restrictions, the employer had him remove staples from documents and shred papers.

On that same date, Dr. Tran authored a letter responding to questions posed to her by ESIS Workers' Compensation. Dr. Tran's stated:

> I believe the main medical diagnosis is adhesive capsulitis of the right shoulder. Based on my examination, I also believe he has long head of biceps tenosynovitis, subacromial bursitis and impingement, and primary osteoarthritis of the acromioclavicular joint. These secondary diagnoses are difficult to tease out due to the diffuse nature of his shoulder pain at this time. It is likely these secondary diagnoses that were aggravated by his injury on 11/9/15 that led to his adhesive capsulitis.

(JE4, p. 35)

The doctor opined that the pulling injury Mr. Trujillo felt on his shoulder on November 9, 2015 could have led to the diagnosis. (JE4, p. 36)

Mr. Trujillo began physical therapy at Active Performance on June 1, 2016. He reported that his right shoulder pain was 8/10. He was to undergo therapy twice a week for six weeks. (JE5)

On June 16, 2016, Mr. Trujillo returned to see Dr. Tran. He reported that the injections helped quite a bit. He felt he had more strength in his hand and ability to grab and hold onto things. However, for the past week or so his pain has been more intense while at work. He reported the pain was going up into the neck and back of his shoulder, the pain was 9/10. At the time of this appointment, his duties at work involved shredding because he was restricted to no use of the right arm. The doctor stated: "[i]t is a little bit perplexing to witness the amount of pain that he is in because he displayed a similar amount of pain or even less pain at his last clinic visit, even though he did say the injection and physical therapy are helping." The doctor ordered an MRI of the

cervical spine and shoulder. She continued his work restrictions and brought his hours down to half a day of work. (JE4, pp. 37-39)

A right shoulder MRI was performed on June 23, 2016. The impression from the MRI was full-thickness tear of the anterior half of the supraspinatus tendon without significant muscle atrophy and irregular tear long head biceps tendon centered about the biceps interval and suggestion of tear of the supraposterior labrum. An MRI of the cervical spine was performed on that same date. The impression was presumed congenital fusion about the occipital atlantal joints, left C2-3 facet joint, and C6-7 and T1-2 vertebral bodies and facet joints; and diffuse cervical disc and facet degenerative changes contributing to variable amounts of neural foraminal compromise. (JE6)

Mr. Trujillo returned to Dr. Tran on June 28, 2016. He reported that he was feeling much better with less pain. He rated his pain as 4/10; he attributed this to the physical therapy and working fewer hours. He still had a pulsing pain in the anterior shoulder. He also had a less intense pain in the posterior shoulder. Dr. Tran reviewed the MRIs. She felt that his right shoulder might require surgical intervention but first she wanted him to work on his frozen shoulder. Mr. Trujillo requested that his work hours be increased from four hours to five hours per day. Dr. Tran increased his hours. (JE4, pp. 40-42)

By August 9, 2016, Mr. Trujillo reported that he was doing very well in physical therapy. A brace and an injection were cancelled because the therapist felt therapy was no longer needed. He had been working five hours per day. He rated his pain between 2 and 4 out of 10. Occasionally, his pain would be as high as a 7. Dr. Tran offered claimant an injection for AC joint arthritis. Mr. Trujillo declined the injection stating that he wanted to see how continued physical therapy went. Dr. Tran was hopeful that he would be able to release him to full duty in one month. (JE4, pp. 43-45)

Mr. Trujillo returned to Dr. Tran on August 23, 2016. He reported increased right shoulder pain. He had severe pain in his bilateral shoulders, neck, and arms. He reported that his shoulder felt inflamed and this started after he returned to work. His employer had to change his job around a few times due to his pain. Mr. Trujillo told Dr. Tran that the managers were reporting to the nurses that he was doing jobs that are different from what he was actually doing. The doctor noted she would like him to return to full duty, but it appeared he could not tolerate the jobs. She recommended continued physical therapy and anti-inflammatories. Mr. Trujillo declined a cortisone injection. She reverted back to his old restrictions of ten-pound weight and five hours per day. (JE4, pp. 46-48)

On September 13, 2016, Mr. Trujillo returned to Dr. Tran. He reported he had been working five hours per day, but he did not obtain the anti-inflammatory medications. He reported his pain was not as bad, but the lateral shoulder and arm does still bother him. He also reported that he was compensating with his left side and that was now beginning to hurt as well. He was working on the production line which mostly required pushing a button. He also had to push and pull the meat which he does

with his left arm. His left arm was starting to bother him. He was still attending therapy. Dr. Tran gave Mr. Trujillo an injection into the acromioclavicular joint of the right shoulder. His restrictions remained unchanged. At this appointment, Dr. Tran explained to Mr. Trujillo that she was leaving DMOS so his care would be with another orthopedic surgeon. (JE4, pp. 49-52)

On October 27, 2016, Mr. Trujillo saw Kary R. Schulte, M.D., at DMOS for evaluation of his right shoulder. Dr. Schulte noted that on November 9, 2015, Mr. Trujillo injured his right shoulder at work while he and a co-worker were moving a machine, causing a traction injury to his right shoulder. Dr. Schulte noted a decreased range of motion in his cervical spine in all planes with pain in the trapezius bilaterally. However, Mr. Trujillo had no further radicular symptoms. Dr. Schulte's assessment was right shoulder rotator cuff tear and impingement syndrome. It was decided that Mr. Trujillo would undergo surgery. He was given work restrictions of 10 pounds lifting limit with right arm, no use of right arm above chest height until surgery. Dr. Schulte noted Mr. Trujillo would be off of work for one week after the surgery and then on light duty for approximately three months. (JE4, pp. 54-56)

On November 11, 2016, Dr. Schulte performed a right shoulder arthroscopy, subacromial decompression surgery. The postoperative diagnosis was right shoulder impingement syndrome. There was a frayed partial thickness tear at the supraspinatus insertion and fraying of the superior labrum, and he shaved down the acromion. (JE8, pp.105-06)

Following surgery, Mr. Trujillo reported marked improvement in his right shoulder pain. Dr. Schulte prescribed physical therapy and work restrictions of 5-pound lifting limit with right arm and no use of his right arm above chest height. (JE4, pp. 57-58)

Dr. Schulte saw Mr. Trujillo again on December 15, 2016. Mr. Trujillo reported continued pain with daily and work activities. He had not been back to work because they were having him up on roofs supervising the employees and the cold was bothering his shoulder. Dr. Schulte examined him and noted symptom magnification and complaints of pain that were out of proportion to the findings at the time of surgery. Dr. Schulte recommended physical therapy and a home exercise program. He gave Mr. Trujillo a work release with a 15-pound lifting limit with the right arm. He encouraged the employer to return Mr. Trujillo to work with the light duty restrictions. (JE4, pp. 59-60)

On January 9, 2017, Mr. Trujillo returned to Dr. Schulte with continued right shoulder pain. He was told to continue with his therapy and home exercise program. (JE4, pp. 61-62)

Mr. Trujillo participated in physical therapy at McFarland Clinic on October 21, 2016. (JE7)

Mr. Trujillo testified that due to the amount of postsurgical pain he was reporting the defendants sent him to have another study. On January 24, 2017, a right shoulder arthrogram was performed. The test showed extravasation of contrast into the subacromial subdeltoid bursa which was compatible with a rotator cuff tear. (JE9, p. 109)

Mr. Trujillo returned to Dr. Schulte on January 26, 2017. He reported that he had continued right shoulder pain and recently also noticed a deformity of his right biceps muscle. Dr. Schulte reviewed the arthrogram. Dr. Schulte noted that at the time of surgery Mr. Trujillo did not have a full-thickness tear; however, there was bursal side fraying of the rotator cuff. Dr. Schulte felt that he apparently had enough fraying that during his normal postoperative rehab the tendon ruptured and became a full-thickness tear. Treatment options were discussed. Mr. Trujillo was given a work release with no use of his right arm until surgery. (JE4, pp. 64-66)

On February 3, 2017, Dr. Schulte performed an open right rotator cuff repair. The postoperative diagnosis was right shoulder rotator cuff tear. Dr. Schulte noted full thickness tear of the supraspinatus insertion, which he debrided, and that suture were placed. (JE8, pp. 107-08)

Mr. Trujillo returned to see Dr. Schulte on February 9, 2017. He had improvement in his right shoulder pain compared to before surgery. He was prescribed physical therapy, medications, and home exercises. He was to remain in the shoulder immobilizer except during his range of motion exercises. Mr. Trujillo was restricted to no use of his right arm at work. (JE4, pp. 67-68)

Mr. Trujillo attended physical therapy at Active Performance Physical Therapy on February 13, 2017 until May 1, 2017. (JE5)

On March 6, 2017, Mr. Trujillo returned to Dr. Schulte. He reported much less pain than prior to his second surgery. He was to continue with his physical therapy. Dr. Schulte restricted Mr. Trujillo to two-pound lifting limit with his right arm, no use of his right arm above chest height. He was to discontinue use of the immobilizer. (JE4, pp. 69-70)

On April 10, 2017, Mr. Trujillo returned to Dr. Schulte and reported marked improvement in his right shoulder pain. The physical exam noted 150 degrees of active flexion and abduction of the right shoulder, with 70 degrees of internal and external rotation. He was to continue with therapy. Mr. Trujillo was given a work release with five-pound lifting limit for the right arm, no use of the right arm above chest height. (JE4, pp. 71-72)

Mr. Trujillo returned to see Dr. Schulte on April 24, 2017, which was earlier than scheduled. He reported having more pain in the shoulder and numbness and tingling in his legs. He reported no new injury. At work he was performing paper shredding. During physical therapy, he noted numbness and tingling in his legs. Dr. Schulte did not

see anything on his examination to warrant a change in his rehabilitation. His work restrictions were continued. (JE4, pp.73-74)

Dr. Schulte saw Mr. Trujillo again on May 8, 2017. He recommended an arthrogram to rule out or confirm a repeat/residual rotator cuff tear. His work restrictions remained the same. (JE4, pp. 75-76)

Mr. Trujillo saw Dr. Schulte again on May 10, 2017, which was after the May 8, 2017 arthrogram. Dr. Schulte diagnosed a repeat right shoulder rotator cuff tear despite a very solid repair. Mr. Trujillo opted for repeat surgery. (JE4, pp. 77-78; JE9, p. 110)

The employer sent Mr. Trujillo to a different surgeon for another evaluation. On June 20, 2017, Mr. Trujillo saw Scott B. Reynolds, M.D., at Nebraska Ortho for right shoulder pain. Dr. Reynolds noted his treatment history. Mr. Trujillo reported he continued to have a lot of pain and discomfort. The assessment was right shoulder persistent pain and dysfunction, status post two previous shoulder surgeries with possible recurrent rotator cuff tear. Dr. Reynolds explained to Mr. Trujillo that there was no perfect answer. For now, he was to continue with therapy and there was discussion about another possible surgery. His restrictions remained the same. (JE10, pp. 111-115)

On July 25, 2017, Mr. Trujillo returned to see Dr. Reynolds. He had not improved with physical therapy and conservative treatment. He has not been able to return to normal activity level. Mr. Trujillo wanted to explore other treatment options. Dr. Reynolds felt that repeat surgery was a reasonable option. First, the doctor wanted another MRI. The MRI was performed that day. Dr. Reynolds reviewed the MRI and determined that he would proceed with surgery. Dr. Reynolds noted that it was hard to predict his ultimate outcome and that having a third shoulder surgery was not an ideal situation. (JE10, pp. 117-1120; JE11, pp.167-68)

On August 25, 2017, Dr. Reynolds performed a right shoulder arthroscopic revision subacromial decompression, distal clavicle excision, extensive debridement of labrum, bursal side rotator capsule, bursal tissue, and scar tissue procedure. The postoperative diagnoses were right shoulder recurrent impingement with acromioclavicular degenerative changes, excessive scar, retained loose sutures and suture knots, degenerative labral fraying, and healed rotator cuff with no evidence of recurrent tearing. (JE11, pp. 169-171) Mr. Trujillo testified at hearing Dr. Reynolds advised him that during surgery he found thread inside his right shoulder from the previous surgery and that was not right.

Mr. Trujillo followed-up with Dr. Reynolds postoperatively. He reported he was feeling much better, but he did have a little bit of tightness in his shoulder. He reported he was tolerating shredding papers at work. He was instructed to continue with physical therapy. Dr. Reynolds gave Mr. Trujillo a note for sedentary work duties, no more than five pounds with no overhead work. By late October, he was still doing well but working

in a cold environment increased his discomfort and pain. Dr. Reynolds continued his same work restrictions. (JE10, pp. 121-29)

Mr. Trujillo testified that his initial light duty job was shredding papers. After his third right shoulder surgery, for a short period of time, the employer placed him in a job placing stickers on boxes in the area where hams were packed. Next, he was moved to a cooler area where he removed hams from baskets, packed them, and then pushed them down the line. The cold environment increased Mr. Trujillo's right shoulder and neck pain. Subsequent to the third surgery, Mr. Trujillo also developed left shoulder pain from overuse of the left upper extremity to compensate for his right shoulder limitations. (Testimony)

On November 30, 2017, Mr. Trujillo returned to Dr. Reynolds. He reported he was having a lot more increased pain in his arm over the last two to three weeks. There was no new injury, the increase was gradual. He also described neck pain, upper shoulder pain, and pain shooting all the way down into his arm and around his shoulder blade. Dr. Reynolds understood Mr. Trujillo's frustration but felt there was not much more that could be done from a shoulder standpoint. The doctor did recommend an MRI of the cervical spine and an EMG and nerve conduction test. (JE10, pp. 130-33)

The MRI was performed on December 8, 2017. (JE11, pp. 172-74) An EMG was performed that same day. (JE12) Mr. Trujillo returned to Dr. Reynolds following the testing. Dr. Reynolds reviewed the MRI of the cervical spine and noted that he had multilevel foraminal stenosis, as well as some central canal stenosis. The EMG showed some findings consistent with median and ulnar neuropathy and compression distally. Dr. Reynolds felt that Mr. Trujillo's symptoms were more cervical-spine related and that there was not much more he could offer from a shoulder standpoint. Dr. Reynolds recommended an opinion from a nonoperative spine specialist. Dr. Reynolds noted that some of the degenerative changes were preexisting, but he felt a spine specialist should address how this was all related to his current symptoms. (JE10, pp. 134-37)

Matthew Hahn, M.D., saw Mr. Trujillo on January 15, 2018 for evaluation of three-month history of neck and right upper extremity radicular pain to the 1st and 2nd digits of the right hand. Dr. Hahn felt at least a component of his pain was expected pain following his recent shoulder arthroscopy. However, he also felt Mr. Trujillo was experiencing new radicular pain down the right upper extremity. Dr. Hahn could not say for certain that the pain represented a new right C6 radiculopathy, but there were findings on his cervical spine MRI where were consistent with that. Dr. Hahn recommended a course of physical therapy directed at his neck and a trial of Gabapentin. (JE10, pp. 138-143)

On January 24, 2018, at the direction of his attorney, Mr. Trujillo saw Sunil Bansal, M.D., for an independent medical examination (IME). He reported right shoulder pain, located across the top of his shoulder into the right side of his neck. Also, pain that started at the top of his shoulder and radiated down his right arm into his hand, including all of his fingers. He also had constant pain in his left shoulder. Mr.

Trujillo experienced neck pain that radiated into both shoulder blades and into his right thumb with numbness and tingling. He has problems with short-term memory. He also reported problems with concentration and felt depressed.

Dr. Bansal felt that Mr. Trujillo had permanent neck, left shoulder, and right shoulder conditions. With regard to Mr. Trujillo's neck, Dr. Bansal diagnosed aggravation of multi-level spondylosis and facet arthropathy of his neck. Dr. Bansal stated that "the mechanism of sliding the 800-900 pound grinder with friction also aggravated Mr. Trujillo's cervical spondylosis." (Cl. Ex. 1, p. 21) He further stated, "the continued performance of his work duties that required pushing and pulling of heavy machinery continued to further aggravate his cervical spondylosis." (Id.) He noted that Mr. Trujillo's neck symptoms were reported at the first clinical visit. He assigned 5 percent whole person impairment for Mr. Trujillo's neck. Dr. Bansal restricted him to avoid work or activities that require repeated neck motion, or that place his neck in a posturally flexed position for any appreciable duration of time (greater than 15 minutes).

With regard to the left shoulder, Dr. Bansal felt the examination and symptomatology was characteristic of rotator cuff pathology. Unfortunately, an MRI had not been performed to adequately elucidate his pathology. Dr. Bansal assigned 2 percent whole person impairment. He restricted Mr. Trujillo to no lifting greater than 15 pounds with the left arm, along with no lifting greater than 5 pounds over shoulder level with the left arm occasionally and no frequent over the shoulder level lifting with the arm.

With regard to the right shoulder, Dr. Bansal diagnosed: (1) status post right shoulder arthroscopy with subacromial decompression; (2) status post open right rotator cuff repair; and (3) status post right shoulder examination under anesthesia, arthroscopic revision subacromial decompression, distal clavicle excision, and extensive debridement of labrum, bursal side of the rotator cuff capsule, bursal tissue, and scar tissue, and removal of previously placed loose sutures and suture knots. Dr. Bansal assigned 10 percent whole person impairment. Dr. Bansal restricted him to no lifting greater than 5 pounds with the right arm, along with no lifting above shoulder level or away with the right arm. (Cl. Ex. 1)

Mr. Trujillo returned to Dr. Hahn on March 20, 2018. He reported that the right C5-6 transforaminal epidural steroid injection which he received did not provide any relief. He also reported that since the injection he did not attend any therapy because the therapy exacerbated his pain. Mr. Trujillo also reported that he attempted to return to work with sedentary restrictions but was unable to tolerate the work. At this visit Mr. Trujillo also complained of axial low back pain for the past 1 ½ weeks. Mr. Trujillo wondered if that pain could be related to the injection. Dr. Hahn advised him it would be extremely unlikely. (JE10, pp. 149-54)

At hearing, Mr. Trujillo agreed that Dr. Hahn had said that his neck condition was not related to his work for the defendant-employer. (Tr. p. 57) Unfortunately, the record is void of any rationale as to why Dr. Hahn felt the neck condition was not related to his

work. Additionally, Dr. Hahn did not address whether the neck condition was aggravated by work.

On April 13, 2018, Mr. Trujillo saw George Greene, M.D., for neck and right shoulder pain. The doctor noted that Mr. Trujillo reported right shoulder pain, bilateral diffuse arm pain more on the right than the left, leg weakness, and gait disturbance secondary to his pain. Dr. Greene was suspicious that the majority of his right shoulder pain was originating from the shoulder itself. It was not clear to Dr. Greene whether the complaints of bilateral arm pain were related to the C7-T1 spondylolisthesis with neural foraminal narrowing. However, Dr. Greene stated that the finding was unrelated to his workers' compensation injury. Dr. Greene did not provide his rationale for why the finding was unrelated, nor did he address whether the neck condition was aggravated by work. He discussed further treatment options, including surgery. Dr. Greene also stated it was unclear how low back pain and bilateral leg paresthesias could be related to the injection. (JE10, pp. 155-58)

Mr. Trujillo returned to Dr. Reynolds for his shoulder on April 19, 2018. He rated his right shoulder pain as 8-9/10. He was no longer participating in any physical therapy. Dr. Reynolds' assessment was persistent right shoulder pain with previous right shoulder scope with distal clavicle excision, decompression and extensive debridement with continued symptoms and C7-T1 spondylolisthesis. Dr. Reynolds continued to feel that the majority of his pain was related to the cervical spine. He did perform a diagnostic therapeutic injection for the right shoulder. Dr. Reynolds noted that Mr. Trujillo was beginning to have bilateral shoulder issues or bilateral shoulder pain and radiculopathy which the doctor felt was linked to his cervical spine issues. There was nothing further to offer him in terms of his right shoulder. Dr. Reynolds advised Mr. Trujillo to follow-up as needed. He gave a return to work sheet with sedentary restrictions of lifting 5 pounds max with occasionally lifting, carrying, pushing, or pulling light objects. (JE10, pp. 159-62)

On May 15, 2018, Mr. Trujillo underwent another evaluation with Dr. Bansal. Dr. Bansal stood by all of his previous opinions on diagnosis, causation, MMI, impairment rating, permanent restrictions, and future care. (Cl. Ex. 1, pp. 26-31)

On June 27, 2018, Dr. Reynolds answered questions posed by the defendants' attorney. Dr. Reynolds stated his diagnosis for Mr. Trujillo's right shoulder was right shoulder pain, status post pervious right shoulder scope with distal clavicle decompression and debridement as a result of a right shoulder strain that resulted in a rotator cuff tear. He opined that he had reached MMI for his right shoulder as of April 19, 2018. Dr. Reynolds assigned 10 percent whole person impairment for the right shoulder. Dr. Reynolds felt that the restrictions outlined by Dr. Bansal were reasonable for the right shoulder. No lifting more than 5 pounds and no lifting above shoulder level. He did not anticipate any additional treatment for the right shoulder.

With regard to Mr. Trujillo's left shoulder, Dr. Reynolds felt that he might potentially have some overuse pain and strain due to the right shoulder injury. He

assigned 2 percent whole person impairment. He restricted Mr. Trujillo to no lifting more than 15 pounds and limited to 5 pounds above shoulder level. Also, no repetitive overhead work. He did not anticipate any additional treatment for the left shoulder.

With regard to the cervical spine, Dr. Reynolds noted that Mr. Trujillo had multi-level spondylosis and facet arthropathy with congenital fusion of C6-7 and grade 1 anterolisthesis C7 on T1 and C7-T1 neuroforaminal narrowing. Dr. Reynolds opined that Mr. Trujillo's neck complaints were not related to the work or work injury. Unfortunately, Dr. Reynolds did not provide any rationale for his opinion. Notably, Dr. Reynolds was not asked whether Mr. Trujillo's neck condition was aggravated by his work with the employer. Because Dr. Reynolds felt the neck complaints were not work-related he did not assign an impairment rating. Dr. Reynolds did not suggest any restrictions for the cervical spine. He deferred to Dr. Greene or Dr. Hahn.

Dr. Reynolds opined that Dr. Bansal's restrictions outlined on page 27 of his IME report seemed warranted. With regard to Mr. Trujillo's subjective pain reports, Dr. Reynolds indicated he felt the complaints were coming from the right shoulder, left shoulder, and from the cervical spine. He felt it was difficult to delineate and separate the neck and shoulder conditions. Defendants provided Dr. Reynolds with a video and job description. Dr. Reynolds reviewed both and opined that the particular job did not require any type of significant overhead work. He felt that Mr. Trujillo could return back to that type of job. (JE10, pp. 163-66)

Defendants stipulated that Mr. Trujillo sustained a permanent work injury to his right shoulder on March 14, 2016. Claimant alleged he sustained a sequela injury to his left shoulder due to overuse; defendants do not dispute this. Claimant has alleged that he sustained a work-related cervical injury on March 14, 2016 or alternatively on November 9, 2015. Defendants dispute that claimant sustained a work-related cervical injury on either date.

With regard to causation for Mr. Trujillo's neck, I find the opinions of Dr. Bansal to be most persuasive. Claimant correctly argues:

> Dr. Bansal's medical conclusion regarding causation of Mr. Trujillo's work injury to his neck represents the only appropriate medical-legal causation conclusion rendered in this case, as he was the only physician who rendered an opinion of whether Mr. Trujillo's work injury aggravated an underlying, pre-existing, degenerative condition, as opposed to whether Mr. Trujillo's underlying condition was caused by his work.

(Cl. Brief, p. 21) I find that Dr. Bansal is the only medical expert in this case to address whether the work injury aggravated Mr. Trujillo's cervical spine condition. I accept Dr. Bansal's unrebutted opinion that the incident on November 9, 2015 aggravated his neck condition resulting in permanent injury.

I find that the preponderance of the evidence demonstrates that claimant sustained an injury to his right shoulder and neck on November 9, 2015, and that the left shoulder and any further injury is sequela. I also find that the injury caused claimant to sustain permanent disability to his right shoulder, left shoulder, and neck. Thus, I find the employer is responsible for the industrial disability caused by the November 9, 2015 incident and the medical treatment necessitated by that incident and moving forward.

Mr. Trujillo testified that because of the work injury, he has restrictions placed on his activities. His understanding of those restrictions are as follows: for his right shoulder is restricted to lifting only 5 pounds, no work above shoulder level and he cannot stretch his arm out continuously; for his left shoulder he can only lift 15 pounds up to shoulder height and 5 pounds above shoulder height; and for his neck he cannot look down more than 15 minutes at a time and no repetitive movement of his neck. Mr. Trujillo testified that the shoulder restrictions are from Dr. Reynolds and he received similar restrictions from Dr. Bansal. The neck restrictions are also from Dr. Bansal. (Testimony)

Dr. Bansal assigned permanent work restrictions to Mr. Trujillo. Dr. Reynolds adopted those restrictions. I find that claimant's restrictions are as set forth by Dr. Bansal. The restrictions for the right shoulder are no lifting greater than 5 pounds with the right arm, along with no lifting above shoulder level or away with the right arm. The restrictions for the left shoulder are no lifting greater than 15 pounds with the left arm, along with no lifting greater than 5 pounds over shoulder level with the left arm occasionally and no frequent over the shoulder level lifting with the arm. The restrictions for Mr. Trujillo's neck are to avoid work or activities that require repeated neck motion, or that place his neck in a posturally flexed position for any appreciable duration of time (greater than 15 minutes). (Cl. Ex. 1)

Mr. Trujillo testified that he does not believe he could return to work at his prior job with the defendant-employer. Defendants point out that since Mr. Trujillo last performed that job, the position has changed and no longer requires moving the large grinder machine. Dr. Reynolds reviewed a video and job description of Mr. Trujillo's regular job duty, as it currently exists. Dr. Reynolds stated:

> [f]rom what I saw on the video, it did not appear that that particular job required any type of significant overhead work. Using the powered pallet jack also did not seem to require a significant amount of pushing or pulling with most of the work being done by the motorized power jack. Therefore, yes, I do believe Mr. Trujillo could return back to that type of job.

(Def. Ex. I, p. 69)

However, Dr. Reynolds' opinion is not supported by the written job description provided by the defendants. The job description states that one of the essential duties of the job is carrying, lifting, lowering pushing, and pulling of heavy and/or awkward objects or loads up to 60 pounds. The job description also states that the position

requires working overhead. (Def. Ex. A, p. 1) Based on the written job description, I find that this work is not within the permanent restrictions assigned by Dr. Bansal and adopted by Dr. Reynolds.

Claimant testified that his restrictions also prevent him from returning to any of the jobs he held prior to Smithfield. Prior to working at Smithfield he worked in agricultural sales in Mexico. However, because he speaks very little English he does not believe he would be qualified for this work in the United States. While in Mexico, Mr. Trujillo also worked as a driver for the Comision Federal de Electricidad. However, this job required work above shoulder level, reaching, and repetitive neck movement which is outside of his restrictions. He also worked as a chauffeur and taxi driver in Mexico. He testified that both of these jobs required activities outside of his restrictions. After coming to the United States, Mr. Trujillo worked at a tree nursery job in Indiana. However, this job also required activities that are beyond her restrictions. Mr. Trujillo worked several types of construction, but he cannot return to that type of work because those jobs also require activities beyond his restrictions. (Testimony; Cl. Ex. 3, pp. 41-42)

Based on claimant's testimony and the restrictions set forth by Dr. Bansal and adopted by Dr. Reynolds, I find that claimant cannot return to any of those prior jobs. At the time of the arbitration hearing, Smithfield, to their credit, had placed Mr. Trujillo in lighter duty work. He was working in supply and removing the empty soda cans. He also hands out gloves to all the workers when they arrive and during their breaks. He has been doing this since March of 2018. He works two to four hours per day, two to three days per week. He does not work more than this due to his pain. (Testimony)

Smithfield argues that Mr. Trujillo lacks motivation to work more than 4 to 12 hours per week. No medical expert in this case has restricted the number of hours Mr. Trujillo can work per day or week. Furthermore, he has not looked for any other work within the plant, nor has he looked for any other full time job outside of Smithfield.

Although Mr. Trujillo cannot return to his prior jobs, no medical provider has opined that he cannot work. I find his restrictions preclude him from a significant number of jobs. However, I find that the preponderance of the evidence does not show that he is permanently and totally disabled. I find Mr. Trujillo has demonstrated that his restrictions are not so limiting that he could not pursue alternate employment if he were so motivated. Yet, he has demonstrated no motivation to find alternate work or retraining.

I also find that Mr. Trujillo has sustained a significant loss of future earning capacity as a result of the work injury. Considering Mr. Trujillo's age, educational background, employment history, ability to retrain, lack of motivation to obtain a job, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 70 percent loss of future earning capacity as a result of his work injury.

There is a dispute about the appropriate commencement date in this case. Claimant contends permanency benefits should commence on April 19, 2018, the date Dr. Reynolds placed claimant at MMI. Defendants contend the appropriate commencement date is December 28, 2017 when Dr. Reynolds stated there was not much else to offer from a shoulder standpoint. (JE10) Dr. Bansal placed claimant at MMI for his right and left shoulder on December 28, 2017. However, he did not place claimant at MMI for his neck until January 15, 2018. Dr. Reynolds, the authorized treating physician, did not place claimant at MMI for his right shoulder until April 19, 2018. With regard to the MMI date for claimant's shoulder I find the opinion of Dr. Reynolds carries the greatest weight. Thus, I conclude that claimant reached MMI on April 19, 2018. As such, I find claimant's healing period ended on April 19, 2018 and his permanency benefits shall commence on April 20, 2018.

We now turn to Mr. Trujillo's claim for the past medical expenses which are set forth in the attachment to the hearing report. Defendants deny that these bills are their responsibility because they accepted the March 14, 2016 date of injury and the bills claimant is seeking to recover are for dates before March 14, 2016. I do not find this argument to be persuasive because the preponderance of the evidence in this case demonstrates that claimant sustained an injury to his right shoulder and neck on November 9, 2015, and the left shoulder and any further injury is sequela. I find the medical expenses which claimant is seeking to recover were reasonable and necessary as a result of the November 9, 2015 work injury. As such, I find that defendants are responsible for those expenses.

Claimant is also seeking reimbursement for an IME under Iowa Code section 85.39. He is seeking reimbursement for the IME of Dr. Bansal which took place on January 30, 2018. I find that at the time of this examination there had not been a prior evaluation of permanent disability made by a physician retained by the employer.

Finally, claimant is seeking an assessment of costs. I find that claimant was generally successful in his claim and that an assessment of costs against the defendants is appropriate. I find the filing fee in the amount of $100.00 is appropriate under 876 IAC 4.33(7). I also find that the service fees in the amount of $13.42 are appropriate under 876 IAC 4.33(3). Claimant is also seeking Dr. Bansal's IME report in the amount of $3,156.00 as a cost. IAC Rule 876 4.33(6) allows for the reasonable costs of obtaining no more than two doctors' reports. Dr. Bansal's bill indicates that the physical examination was $631.00 and the report was $2,525.00. I find that only the cost of the report may be taxed as a cost. Thus, I conclude defendants are taxed costs in the amount of $2,638.42.

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 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).

Based on the above findings of fact, I conclude claimant sustained an injury to his right shoulder and neck on November 9, 2015, and that the left shoulder and any further injury is sequela. Thus, I conclude that claimant has sustained a compensable, permanent injury to his 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.

Based on the above findings of fact, I conclude that Mr. Trujillo has sustained a 70 percent loss of future earning capacity as a result of his work injury. As such, he is entitled to 350 weeks of permanent partial disability benefits. The benefits shall commence on April 20, 2018.

Claimant is seeking payment of past medical expenses. 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 1975).

Based on the above findings of fact, I conclude that defendants shall be responsible for the medical expenses submitted by Mr. Trujillo. Defendants shall reimburse claimant for all out-of-pocket medical expenses, shall pay or satisfy all outstanding medical expenses, liens, or subrogation claims, and shall hold claimant harmless for all medical expenses contained in or summarized in the attachments to the hearing report.

Finally, claimant is seeking an assessment of costs. Based on the above findings of fact, I exercise my discretion and conclude defendants are responsible for costs in the amount of $2,638.42.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of four hundred eighteen and 09/100 dollars ($418.09).

Defendant shall pay three hundred fifty (350) weeks of permanent partial disability benefits commencing on April 20, 2018.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendants shall reimburse claimant for all out-of-pocket medical expenses, shall pay or satisfy all outstanding medical expenses, liens, or subrogation claims, and shall hold claimant harmless for all medical expenses contained in or summarized in the attachments to the hearing report.

Defendants are assessed costs in the amount of two thousand six hundred thirty-eight and 42/100 dollars ($2,638.42).

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 5th day of October, 2018.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.