BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KESHIA HEISTER, Claimant, vs. DREAM II HOLDINGS, LLC., Employer, and THE HARTFORD, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 1652134.01 ARBITRATION DECISION

STATEMENT OF THE CASE

Keshia Heister, claimant, filed a petition for arbitration against Dream II Holdings, LLC, as the employer, and The Hartford, as the insurance carrier. Claimant also filed a claim against the Second Injury Fund of Iowa. This case came before the undersigned for an arbitration hearing on September 10, 2020, via CourtCall.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 6, Defendants' Exhibits A through C, and Second Injury Fund Exhibit AA. All exhibits were received without objection.

Claimant testified on her own behalf. Claimant called Cory Heister to testify on her behalf. No other witnesses were called to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

All parties served their post-hearing briefs on October 23, 2020, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the August 1, 2018, work injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits for a scheduled member injury to the left arm;

2. Whether claimant sustained a prior qualifying loss to the right upper extremity on October 31, 2013, and, if so, the functional loss attributable to the same;

3. Whether claimant proved the August 1, 2018, work injury is a qualifying injury for purposes of Second Injury Fund benefits;

4. The extent of claimant's entitlement to Second Injury Fund benefits, if any;

5. Whether costs should be assessed against any party and, if so, in what amount.

FINDINGS OF FACT

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

Keshia Heister was born on November 2, 1982, making her 37 years old at the time of hearing. (Hearing Transcript, page 21) She lives on a farm in Maquoketa, Iowa, with her husband, Cory Heister. Id. Mr. and Mrs. Heister have a "hobby farm" where they raise cows and chickens. (Hr. Tr., p. 13)

Claimant graduated from Bellevue High School in 2001. (Hr. Tr., p. 23) She would go on to complete a certified nursing assistant course at Clinton Community College in 2006. (Hr. Tr., p. 26) Claimant's employment history is limited. Aside from working for the defendant employer, claimant's employment history consists of working as a team member at McDonald's, and as a CNA at Crestridge nursing home in Maquoketa, Iowa. (Hr. Tr., p. 25)

Claimant began working for McDonald's in 1998, while she was still in high school. (Hr. Tr., p. 62) Her job duties at the time included working the drive-thru window and providing assistance in the kitchen. (Hr. Tr., p. 24) Claimant left McDonald's in 2005 to work for Crestridge. (See Hr. Tr., pp. 25, 63) Claimant worked at Crestridge for just under five years. (Hr. Tr., p. 26) Claimant lost her CNA license and position with Crestridge after she accepted money from a resident in her care. (Hr. Tr., pp. 63-64) After losing her job at Crestridge, claimant returned to work at McDonald's. (See Hr. Tr., p. 28)

Claimant began working as a full-time employee for the defendant employer on June 26, 2012. (See JE3, p. 40) Dream II Holdings, LLC manufactures home decoration products, including pillows and quilts. (Hr. Tr., p. 29) Claimant was hired as a sewer. (Hr. Tr., p. 30) On what would be considered a normal day, claimant would sew between 1,800 and 2,200 pillows. (Hr. Tr., p. 30) To sew a pillow, claimant would first grab fabric off a conveyor belt and use her hands to feed said fabric through a sewing machine. (See Hr. Tr., pp. 30-31). Next, she would put a tag on the pillow, check it for holes, and then place it onto a different conveyor belt. (See Hr. Tr., pp. 30-31) Claimant estimates she could sew four pillows per minute, or one every fifteen seconds. (See Hr. Tr., pp. 31-32)

In addition to sewing pillows, claimant would sometimes be required to "pound" or "pack" pillows. Pounding pillows required claimant to hit pillows on a table. Packing pillows required claimant to pack up to ten pillows in a box. (Hr. Tr., p. 34) Claimant asserts she would regularly have to lift boxes of pillows weighing between 20 and 50 pounds. (Hr. Tr., pp. 35-37)

Mrs. Heister asserts she began experiencing issues in her hands and wrists on or about October 31, 2013. (Hr. Tr., pp. 39-40) According to claimant, it felt like there was a rubber band in her hand that had gotten too tight. (See Hr. Tr., p. 40) As her symptoms progressed, her fingers would go numb and pain would radiate up to her elbow. Id. Initially, claimant's symptoms were confined to her right hand; however, they would eventually present in both hands. Id.

The medical records in evidence actually reflect claimant first reported issues within her right hand in September of 2012. (JE1, p. 1) More specifically, claimant reported a sharp pain in the palm of her right ring finger. According to claimant, her finger would, at times, lock at the PIP joint and she would have to manipulate it into extension. Id. Additionally, claimant reported a six-month history of paresthesias in her bilateral hands, involving the thumb, index, and long fingers. Id. She was diagnosed with bilateral carpal tunnel syndrome and right ring trigger finger. (JE1, p. 2) An injection for the right trigger finger and carpal tunnel syndrome was administered and EMG studies were ordered. Id.

The injection was beneficial to claimant's condition. At her November 9, 2012, follow-up appointment, claimant relayed that her right hand was doing much better, with the paresthesias and discomfort only occurring on a rare basis. (JE1, p. 8) Unfortunately, claimant's left hand/wrist was still symptomatic, with constant numbness in the thumb, index, and long fingers. It is noted that the pain kept her awake at night, and caused her to drop various items. Claimant reported stiffness to the point where she could not make a fist with her left hand. An injection for the left trigger finger and carpal tunnel syndrome was administered. (JE1, pp. 8-9)

The EMG revealed bilateral carpal tunnel syndrome with no clear evidence of peripheral neuropathy. (See JE1, p. 8)

Claimant presented to her primary care physician (PCP) throughout August 2013, with complaints of bilateral hand pain and swelling. (JE2, pp. 12-17) Claimant's PCP prescribed two rounds of prednisone and lab work to rule out diabetes and other potential causes. (JE2, p. 17) Unfortunately, it does not appear as though claimant followed through with her PCP's recommendation for lab work. Raymond Hamilton, D.O. believed claimant's condition was related to her long-standing issues with diabetes and her sodium intake. Claimant appears to have been frustrated by Dr. Hamilton's conclusion. (See JE2, p. 15)

Claimant began presenting to Medical Associates in Dubuque, Iowa, on October 4, 2013. (See JE3, p. 18) According to the medical records, claimant told Crista Weber, ARNP, that her symptoms had been present for approximately one year. (JE3, p. 18) Ms. Weber referred claimant to Mark Niemer, M.D. for additional evaluation. (See JE3, p. 20)

Claimant first presented to Dr. Niemer on October 22, 2013. (JE3, p. 20) She

reported progressive worsening of her condition. Id. Claimant's range of motion was normal in both wrists, elbows, and shoulders. (JE3, p. 21) Dr. Niemer believed claimant's conditions were a combination of early osteoarthritis as well as stiff hands related to her diabetes. (JE3, p. 22) Nevertheless, Dr. Niemer felt claimant might have some carpal tunnel symptoms, so he ordered an updated EMG. Id.

The EMG, dated October 31, 2013, revealed severe bilateral median nerve entrapment in claimant's wrists. (JE3, p. 23) Based on the EMG results, Dr. Niemer referred claimant to Edwin Castaneda, M.D. (See JE3, p. 28) Dr. Castaneda ultimately performed a carpal tunnel release of claimant's right wrist on August 8, 2014. (JE3, pp. 31-32) According to claimant, the procedure resolved the numbness and tingling she was experiencing in her right hand and fingers. (JE3, p. 37)

Claimant presented to Dr. Castaneda's office for her first post-surgical follow-up appointment on August 14, 2014. (JE3, p. 34) Dr. Castaneda's post-op diagnoses were carpal tunnel syndrome, acquired trigger finger, and synovitis and/or tenosynovitis associated with another disease. (JE3, p. 35) Claimant's range of motion in the right wrist was still poor; however, it was thought to be a significant improvement when compared to her pre-op condition. Dr. Castaneda released claimant on September 8, 2014. (JE3, p. 37)

For her second injury, claimant asserts she experienced a worsening of the symptoms in her left wrist and hand in approximately July 2018. (Hr. Tr., p. 44) Claimant asserts that she reported her symptoms to the human resources department on August 1, 2018. According to claimant, her symptoms prevented her from sewing pillows. Id. Claimant requested, and defendants subsequently authorized, medical treatment. (Hr. Tr., p. 45)

Later that afternoon, claimant presented to Jerald Bybee, M.D. of Maquoketa Family Clinic with complaints of left wrist, forearm, and shoulder pain. (JE4, p. 62) Claimant told Dr. Bybee she was positive she had carpal tunnel syndrome and the condition was work-related. Id. Dr. Bybee recommended claimant speak to the human resources department about scheduling an evaluation with an orthopedic surgeon. Id.

Claimant returned to Maquoketa Family Clinic on August 7, 2018, requesting a note providing she could not work. (JE4, p. 64) Claimant relayed her opinion that overtime work had triggered an increase in her symptoms. Id. Following her evaluation, Ann Patterson, ARNP restricted claimant from utilizing her left hand at work. (JE4, p. 65)

In an August 13, 2018, medical record, Emily Armstrong, PA-C, of Medical Associates opined, "It is with a reasonable degree of medical certainty that this patient has work-related carpal tunnel syndrome." (JE3, p. 41) Ms. Armstrong subsequently ordered EMGs of claimant's bilateral arms and referred claimant back to Dr. Castaneda. Id.

The updated EMGs, dated August 31, 2018, revealed bilateral median neuropathy at the wrist with axon loss. (JE5, p. 70)

After reviewing claimant's EMGs, Dr. Castaneda diagnosed claimant with severe left carpal tunnel syndrome. (JE3, p. 45) He subsequently recommended and performed

a carpal tunnel release on claimant's left wrist on September 28, 2018. (JE3, p. 46) Like with the right carpal tunnel release, claimant's left carpal tunnel release reduced the numbness in her wrist. (Hr. Tr., p. 47)

Claimant returned to Dr. Castaneda on November 19, 2018. (JE3, p. 51) Dr. Castaneda's notes provide that claimant's neurovascular status had returned to normal, she had full range of motion, and she no longer had pain with gripping and squeezing. Id. Dr. Castaneda estimated that claimant would reach maximum medical improvement (MMI) in six to eight weeks. (JE3, p. 52)

Unfortunately, claimant also reported triggering of the left long finger and symptoms consistent with lateral epicondylitis at the November 19, 2018, appointment. (JE3, p. 51) Dr. Castaneda opined the trigger finger and epicondylitis were not related to the carpal tunnel release, and would not be considered under claimant's workers' compensation. (JE3, p. 51) Dr. Castaneda nevertheless recommended and administered an injection to claimant's left long finger. The injection was not helpful in alleviating claimant's symptoms. (See Ex. 1, p. 3) Dr. Castaneda returned claimant to physical therapy for her epicondylitis complaints. (JE3, p. 52)

Claimant's employment with the defendant employer was terminated in December, 2018. (Hr. Tr., pp. 33, 72) There is some dispute as to the circumstances surrounding claimant's termination.

After Dr. Castaneda released claimant to return to work with a 10-pound lifting restriction in November 2018, the defendant employer offered claimant light duty work. (Hr. Tr., pp. 71-72) Claimant refused to show up for work and declined to attempt the light duty work that was offered to her. (Hr. Tr., p. 71) Due to claimant's failure to show up for work, the defendant employer terminated her employment in December, 2018. (See Hr. Tr., p. 72)

According to claimant, the defendant employer could not place her in a position that complied with her 10-pound lifting restriction. (Hr. Tr., p. 71) Claimant testified that the position offered to her would have required her to lift over 50 pounds. Id. Defendants, on the other hand, assert they offered claimant a light duty position that met her temporary lifting restrictions; however, claimant refused to show up to work and/or attempt to perform the light duty position. At hearing, claimant acknowledged that the defendant employer offered to return her to work, and that she did not show up for work. Id.

Claimant eventually returned to work for McDonald's as a full-time drive-thru worker in June, 2019. (Hr. Tr., pp. 72-73) Claimant did not conduct a work search between January and June 2019. (Hr. Tr., p. 73) She works approximately 35 to 40 hours per week, and makes $10.25 per hour. (Hr. Tr., p. 38) She is able to handle all of her job duties without issue. (Hr. Tr., p. 73) At the time of hearing, claimant was on a medical leave of absence from McDonald's. (Hr. Tr., p. 73) She last worked for McDonald's in July 2020. (Hr. Tr., p. 89) Due to an unrelated health issue, claimant is unable to wear a face covering, which is currently required by McDonald's due to the COVID-19 pandemic. (Hr. Tr., p. 73) Claimant plans to return to McDonald's in the future. (Hr. Tr., p. 89)

Claimant last presented to Dr. Castaneda on December 31, 2018. (JE3, p. 53) At that time, claimant was still reporting stiffness in her left hand. She did not believe she

could lift anything heavier than 10 pounds. Id. She could not make a tight, compact fist; however, she noted good sensation in the fingers of her left hand. (JE3, pp. 53, 55) She continued to experience triggering of her left long finger. However, Dr. Castaneda again emphasized that her trigger finger had nothing to do with her workers' compensation condition. Id. Dr. Castaneda opined claimant's recovery was somewhat slower than expected but nothing he would consider out of the ordinary. Following his examination, he released claimant from his care. (JE3, p. 55) He deferred claimant's restrictions to Tri-State Occupational Health. Id.

Erin Kennedy, M.D. examined claimant on February 11, 2019, for purposes of restrictions management. (JE3, p. 56) According to the medical record notes, Dr. Castaneda had kept claimant on a 10-pound lifting restriction pending Dr. Kennedy's evaluation. Id. Claimant reported minor discomfort associated with the scar on her left palm. She denied numbness and tingling. Id. Claimant told Dr. Kennedy that she had been increasing the amount of water/weight she carried in her water pail for farm animals. Id. She reported that the limiting factor in her left hand was actually multiple trigger fingers, which Dr. Castaneda opined were not work-related. Id. Interestingly, Dr. Kennedy's notes provide claimant was able to form a composite fist. (JE3, p. 56) Dr. Kennedy opined claimant had no sensory or motor function loss as a result of the open left-sided carpal tunnel release. Id. Dr. Kennedy placed claimant at MMI and released her to full duty work. Id.

At hearing, claimant testified that defendants sent her to Dr. Kennedy because they, "wanted somebody to release me for full duty to come back to work." (Hr. Tr., pp. 91-92) Claimant also testified that Dr. Kennedy continued her 10-pound lifting restriction. (Hr. Tr., p. 92) These assertions are not supported by the evidentiary record. (JE3, p. 56) For instance, claimant's employment relationship with the defendant employer had already come to an end by the time she presented to Dr. Kennedy. (Hr. Tr., pp. 70-71)

Claimant has not presented for additional medical treatment related to her injuries since February 11, 2019. She is on no prescription medications related to her work injury. (See Ex. 1, p. 4)

At hearing, claimant testified she experiences ongoing issues in both hands. She testified her left hand gives her more trouble than the right. (Hr. Tr., pp. 46-47) Claimant's testimony appears to conflict with the evidentiary record in this regard. (See JE3, p. 56) ("She thinks the right hand is weaker than the left […]") According to claimant, her left hand will go numb most mornings, and she has to physically manipulate it in order for it to function. (Hr. Tr., pp. 47, 57) She further provided that she cannot put pressure on the center of her hand, and it is difficult to make a fist. (Hr. Tr., p. 48) Although unrelated, claimant continues to experience issues with her left trigger finger. Claimant testified her finger will still lock up at times, and it does not bend all the way. (Hr. Tr., p. 85) With respect to the right hand, claimant testified it will occasionally go numb; otherwise, it always feels tight. (Hr. Tr., p. 56)

Claimant's husband, Cory Heister, provided testimony on claimant's behalf. (See Hr. Tr., p. 11) The majority of Mr. Heister's testimony centers on claimant's abilities to help out around the house and on the farm. According to Mr. Heister, claimant no longer assists in feeding their cows or chickens (Hr. Tr., p. 15); she is unable to carry buckets of

water (Hr. Tr., p. 18); and she is unable to sleep in bed because of shoulder pain and numbness in her hands. (Hr. Tr., p. 16)

Defendants attack claimant's credibility. They assert that claimant has shown through her testimony at hearing, her reports to medical professionals, and her criminal history that she is not a credible witness.

Defendants first attempt to discredit claimant by pointing out she inconsistently reported the number of pillows she was required to make when speaking to various individuals. Claimant told Ms. Armstrong she made between 2,200 and 2,800 pillows per day. (JE3, p. 40) She told Dr. Taylor that she made between 1,800 and 2,400 pillows per day. (Ex. 1, p. 1) Lastly, claimant testified at the evidentiary hearing that she made between 1,800 and 2,200 pillows per day. (Hr. Tr., p. 30) Defendants assert claimant misrepresented the number of pillows she had to sew, knowing that the medical professionals would rely on her description of her job duties to formulate their opinions. Defendants assert this demonstrates a lack of trustworthiness. This is an objectively ridiculous argument. The argument assumes claimant definitively knew the correct range and consciously inflated her numbers in an attempt to deceive her medical providers. There is no evidence showing that the correct range was known by claimant, or that such a range is widely known amongst sewers employed by defendants. It appears claimant was merely providing an estimate. There are some legitimate concerns with respect to claimant's credibility; however, claimant's inability to consistently report the correct number of pillows sewn in a given day is not one of them.

Defendants next highlight claimant's criminal history, which involves crimes of dishonesty. Unlike misstating the number of pillows sewn in a day, claimant's criminal history is a legitimate concern. Mrs. Heister has two prior convictions for Fifth Degree Theft. (Ex. A, p. 7) She has also been convicted of Second Degree Fraudulent Practice. (Hr. Tr., pp. 78-81) Defendants also discuss the circumstances surrounding claimant's termination from Crestridge as further evidence of claimant's untrustworthiness. Defendants assert these actions show claimant is willing to fraudulently seek and accept benefits to which she is not entitled.

Defendants assert that because of her history of dishonesty, claimant's testimony regarding ongoing left wrist pain, impairment, and restrictions from the August 1, 2018, injury should be rejected. I decline defendants' invitation to summarily reject claimant's testimony solely based upon her past bad acts. While it is clear claimant has had issues with dishonesty in the past, there is little to no evidence of deceit in the matter at hand. No physician has expressed a concern for malingering, and defendants offer no specific instances of contradiction. In general, claimant's complaints were consistent throughout the medical records. With respect to claimant's testimony regarding her stipulated work injury and ongoing symptoms, I find claimant to be generally credible.

In a January 9, 2020, letter, Dr. Kennedy assigned zero percent impairment for claimant's left carpal tunnel syndrome. (JE3, p. 60) According to Dr. Kennedy, claimant demonstrated full range of motion of the left wrist and all digits, full sensory function throughout the hand, and full motor function throughout the hand. Id. Dr. Kennedy found no evidence of vascular compromise. Id.

Claimant's counsel arranged for claimant to undergo an independent medical examination with Mark Taylor, M.D. on March 10, 2020. (See Ex. 1, p. 1) At the time of the IME, claimant was still experiencing stiffness and soreness in her left hand. (Ex. 1, p. 4) She also reported an inability to make a fist and decreased sensation over her second, third, and fourth digits. Id. On the right side, she complained of stiffness, soreness, decreased sensation in the tips of her fingers, and an inability to make a fist. Id. Dr. Taylor agreed with Ms. Armstrong, and opined claimant's work activities were a substantial contributing factor to the development of her left carpal tunnel syndrome. (Ex. 1, p. 7) Dr. Taylor acknowledged that claimant's primary non-work-related risk factor is her diabetes; however, he opined that even in light of her diabetes, her job was hand-intensive and her symptoms worsened with the increase in hours in the timeframe leading up to her evaluation in August 2018. Id. He estimated claimant's MMI date to be February 11, 2019, and assigned five percent left upper extremity impairment. Id.

Dr. Taylor's impairment rating is derived from three possible scenarios, described on page 495 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Dr. Taylor justified his impairment rating by noting claimant had altered sensation in the left hand, positive Tinel's test, positive Phalen's test, and moderate left median neuropathy at the wrist according to a NeuroMetrix test conducted for purposes of the IME. Id. This appears to place claimant into scenario two on page 495 of the AMA Guides.

In terms of restrictions, Dr. Taylor recommended that claimant avoid repetitive and forceful gripping, grasping, and pinching. He provided claimant could handle such motions on an occasional basis.

Dr. Taylor similarly assigned five percent right upper extremity impairment for the alleged first qualifying injury to the right wrist. (Ex. 1, p. 8) He opined the recommendations for claimant's left wrist should also apply on the right.

Six weeks out from the left carpal tunnel release, claimant's neurovascular status was close to being back to normal, and her grip strength was rapidly improving. (JE3, p. 48) On November 19, 2018, it is noted that claimant's left carpal tunnel syndrome was "doing fine" and her neurovascular status had returned to normal. She had full range of motion and no pain with gripping or squeezing. (JE3, p. 51) The only noteworthy symptoms at the time appeared to stem from claimant's unrelated trigger finger and tennis elbow conditions. Id. Nevertheless, claimant was still experiencing tenderness at the incision site, and she could not form a composite fist. Id.

On December 31, 2018, claimant complained of ongoing stiffness, grip strength weakness, an inability to make a tight fist, and expressed her belief she could not lift anything over 10 pounds. (JE3, p. 53) However, her neurovascular status was normal, and she continued to demonstrate good sensation in her fingers. Dr. Castaneda acknowledged that claimant's recovery was going slower than expected, but opined her recovery timeline was nothing out of the ordinary. (JE3, p. 55)

In February, 2019, claimant reported that she did not have much pain remaining. (JE3, p. 56) Dr. Kennedy's February 11, 2019, medical report provides:

> Today she presents reporting that she doesn't have much in the way of pain remaining. She has some very minor discomfort with pressure to the scar

> which is 1/10 and sharp. However, she can push herself up from the ground or bathtub with pressure to the palm. She denies n/t at this time. She thinks the right hand is weaker than the left but that this is improving with time. She notices being able to carry increasing weight with a waterpail to water farm animals. Previously she could only lift 1/2 pail. This has increased. She reports that the limiting factor with use of this hand is actually trigger fingers of multiple digits that are not work-related per Dr. Castaneda. She has had these excised in the other hand before. She denies requiring any OTC's or ice/heat. Relies solely on stretches for comfort.

(JE3, p. 56)

It is reported that claimant was able to form a composite fist at her February 11, 2019, medical appointment. Id. Strength of her digits was 5/5 on opposition and on transpalmar opposition. Id. Dr. Kennedy did not feel as though claimant had any sensory or motor function loss as a result of the left carpal tunnel release. Id.

The above records suggest that claimant was not experiencing significant ongoing symptoms between November 2018 and February 2019. That being said, Dr. Kennedy's examination findings are not entirely in line with the findings made by Dr. Castaneda just six weeks prior. Dr. Kennedy's examination findings are also not in line with the findings of Dr. Taylor.

Dr. Castaneda is the treating surgeon in this case. He evaluated claimant on multiple occasions. Unfortunately, Dr. Castaneda did not provide an opinion of claimant's permanent impairment or need for permanent restrictions.

Dr. Kennedy evaluated Mrs. Heister on one occasion. Dr. Kennedy's office note reflects that claimant performed grip strength testing at the February 11, 2019, appointment. (See JE3, p. 56) Claimant was able to achieve 50 pounds with the right hand, and 40 pounds with the left. (JE3, p. 56) It does not appear as though Dr. Kennedy performed any additional testing on claimant's left hand. It is unclear what, if any, medical records Dr. Kennedy reviewed prior to evaluating claimant in February 2019. However, it is clear Dr. Kennedy reviewed claimant's medical records prior to assessing claimant's permanent impairment on January 9, 2020. (See JE3, pp. 57-60)

Dr. Taylor also evaluated Mrs. Heister on one occasion for purposes of an IME. At the March 10, 2020 appointment, claimant described stiffness and soreness. She also relayed an inability to close her hand. These complaints are similar to the complaints claimant relayed to Dr. Castaneda between November 2018 and December 2018. Dr. Taylor's sensory examination revealed diminished touch generally in a median distribution of the fingertips of both hands. Pinprick testing was decreased in the left distal hand and fingers. Vibratory sensation was decreased in the fingertips bilaterally, mainly in a median distribution. In other words, claimant's sensation was essentially normal in her small fingers bilaterally, however, the other digits had altered or diminished sensation. (Ex. 1, p. 6)

Dr. Taylor's examination and report are more thorough than the report of Dr. Kennedy. Unlike Dr. Kennedy, Dr. Taylor detailed the testing mechanisms he utilized to calculate claimant's permanent impairment. He explained that claimant had normal two-

point discrimination but complained of altered sensation in the left hand. (Ex. 1, p. 7) She also had a positive Tinel's and Phalen's test. Id. Dr. Taylor explained how claimant's test results and ongoing symptoms revealed moderate left median neuropathy at the wrist. Dr. Taylor opined that claimant demonstrated evidence of residual carpal tunnel syndrome from an electrodiagnostic standpoint. Id. While I have some concerns regarding the extent of claimant's disability, I nevertheless believe claimant has sustained a permanent disability as a result of the August 1, 2018, work injury.

Defendants argue claimant's ongoing symptoms could be attributable to claimant's unrelated trigger finger(s). While this is certainly plausible, no physician solely attributed claimant's ongoing symptoms to the unrelated trigger finger condition. (See JE3, pp. 55-60) Moreover, no physician expressly addressed what symptoms were attributable to the left trigger finger and what symptoms were attributable to the left carpal tunnel syndrome. It is clear from the evidentiary record that claimant had ongoing issues separate from the trigger finger condition(s). Dr. Taylor was cognizant of claimant's unrelated trigger finger condition(s). (See Ex. 1, p. 3) He limited his permanent impairment rating to the residual effects of claimant's carpal tunnel syndrome. (Ex. 1, p. 7)

I find the opinion of Dr. Taylor to be the most credible and convincing in this evidentiary record. Dr. Taylor provided a well-reasoned explanation of claimant's permanent impairment and I accept his impairment ratings. As such, I find claimant has proven that she sustained a permanent injury to the left wrist as a result of the August 1, 2018, work injury. Specifically, I find claimant has proven she sustained five percent permanent impairment of the left arm as a result of the August 1, 2018, work injury.

Mrs. Heister also asserts a claim for Second Injury Fund benefits. Mrs. Heister alleges that she sustained a first qualifying injury for purposes of the Second Injury Fund on or about October 31, 2013. In support of her Second Injury Fund claim, Mrs. Heister introduced contemporaneous medical records documenting her initial injury and surgical intervention. Claimant also requested that Dr. Taylor examine her right upper extremity and provide an impairment rating related to the same. Dr. Taylor diagnosed claimant with prior carpal tunnel syndrome on the right. Dr. Taylor assigned five percent right upper extremity impairment and recommended permanent restrictions. (Ex. 1, p. 8)

The Second Injury Fund asserts claimant failed to meet her burden of proving a prior loss or loss of use of her right upper extremity. To this end, the Fund asserts there is no evidence in the record to support a finding that claimant had permanent partial impairment or permanent loss of use of her right upper extremity which existed prior to her alleged work injury on or about August 1, 2018.

The Fund correctly points out that Dr. Castaneda released claimant to return to her position with the defendant employer in 2014. (Hr. Tr., p. 83) The Fund further points out that claimant did, in fact, return to her same position with the defendant employer and she did not request any formal work accommodations for her right carpal tunnel syndrome. Id. She sought no medical treatment for her right carpal tunnel syndrome after Dr. Castaneda's release in 2014. (Hr. Tr., pp. 82-83) She carried no permanent work restrictions as a result of her right carpal tunnel syndrome until she was evaluated by Dr. Taylor.

Dr. Taylor's opinions pertaining to the right upper extremity are not rebutted in the evidentiary record. I accept Dr. Taylor's permanent impairment rating and find claimant has proven five percent permanent impairment of the right upper extremity as a result of the October 31, 2013, injury. I decline, however, to adopt Dr. Taylor's restrictions related to the right upper extremity given claimant's ability to return to work for the defendant employer, without accommodations, between Dr. Castaneda's release and the August 1, 2018, work injury.

I find that claimant has proven permanent disability to both her right upper extremity as a result of the 2013 injury, and to her left upper extremity as a result of the August 1, 2018, work injury. I also find that claimant has proven that these injuries have produced a combined loss of future earning capacity, albeit minimal. I reject the permanent work restrictions offered by Dr. Taylor; however, I accept that claimant likely has some ongoing symptoms with her bilateral upper extremities that limit her functional abilities.

Having found claimant carried her burden of proving both a first and second qualifying injury, I must now determine claimant's loss of earning capacity.

Claimant submitted a vocational evaluation report. Claimant's vocational expert opines that Mrs. Heister has sustained a loss of earning capacity in the range of 20 to 25 percent. (Ex. 3, p. 25) Claimant's vocational expert largely relies upon the restrictions offered by Dr. Taylor. (See Ex. 3, p. 25) I do not find claimant's vocational report to be particularly convincing. The report only focuses on one set of restrictions, and it is difficult to conceptualize how Dr. Taylor's general restrictions could result in a 20 to 25 percent loss of earning capacity. Moreover, the vocational expert's understanding of claimant's post-surgery status is inaccurate. Claimant did not continue to have pain and poor tolerance for any use of her left hand following surgery and therapy. In fact, the medical records reveal just the opposite. Claimant reported minimal pain and provided she was noticing improvements in the amount of weight she could lift and carry.

I find claimant has proven only a modest loss of future earning capacity. Considering her limited educational background, her employment history, her age, her failure to prove definitive work restrictions, and her limited permanent impairment, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mrs. Heister has proven she sustained a ten percent (10%) loss of future earning capacity as a result of the combined effects of the 2013 right carpal tunnel and August 1, 2018, left carpal tunnel injuries.

The parties dispute claimant's gross average weekly earnings at the time of her injury. Review of the parties' arguments demonstrates that there is a factual dispute about what weeks should be included in the calculation. Claimant asserts that she had earnings of $396.00 per week, while defendants contend that the applicable gross earnings prior to the date of injury were $352.00 per week. (Hearing Report, p. 2)

Claimant contends her customary earnings for a pay period are those reflected by at least a 70-hour pay period, or at least $700.00. Claimant's calculation excludes five pay periods ending on March 17, 2018, April 29, 2018, May 13, 2018, May 27, 2018, and July 8, 2018. Claimant contends these pay periods do not reflect her customary earnings.

Claimant did not provide testimony as to why she was absent from employment and/or was not scheduled to work 70 hours or more during the aforementioned pay periods.

Defendants' calculation similarly excludes the pay period ending on May 13, 2018. As such, I find that the pay period ending on May 13, 2018, should be excluded as unrepresentative. According to their post-hearing brief, defendants' calculation includes all other pay periods excluded by claimant.

Analyzing all of the wage records in evidence, the mean hours worked by claimant is 65.12. The median hours worked by claimant is 67.60. Of the 26 pay periods in evidence, claimant worked 70 or more hours 11 times (12 if you round 69.93 up to 70). Of the 14 pay periods that immediately precede the date of injury, claimant worked 70 or more hours just three times.

Given this information, I find the pay periods ending on July 8, 2018, May 27, 2018, April 29, 2018, and March 17, 2018, are representative of claimant's customary earnings. I accept the defendant employer and defendant insurer's gross earnings and rate calculation as the more accurate calculation.

Claimant is seeking an underpayment of $29.27 per week for the period of August 25, 2018, through November 25, 2018. The parties stipulate that claimant was off work during this period of time. During this period of time, defendants were paying temporary total disability (TTD) benefits at the rate of $253.21. (Hr. Tr., pp. 6-7) Having accepted defendants' rate calculation, I find claimant is not entitled to an underpayment of $29.27 per week for the period of August 25, 2018, through November 25, 2018.

Claimant brought a successful petition in arbitration. Therefore, costs will be assessed against defendants in the conclusions of law section.

CONCLUSIONS OF LAW

The initial dispute submitted for resolution is whether claimant proved she sustained a permanent disability of the left wrist as a result of the August 1, 2018, work injury.

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, I found the medical opinions of Dr. Taylor, claimant's expert, to be most convincing and credible. As such, I found claimant carried her burden of proving she sustained a permanent disability of the left wrist as a result of the August 1, 2018, work injury. Having reached this finding of fact, I conclude that claimant also carried her burden of proving entitlement to an award of permanent partial disability benefits against the employer. I further conclude claimant has proven she sustained five percent permanent impairment of the left arm as a result of the August 1, 2018, work injury.

Mrs. Heister also seeks an award of benefits from the Second Injury Fund of Iowa. Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, section 17:1, p. 211 (2014-2015).

In this case, the parties disputed whether claimant sustained a first qualifying injury. It is clear and obvious from the medical records in evidence that claimant sustained an injury on or about October 31, 2013, to her right wrist. It is less clear that claimant sustained permanent disability as a result of the October 31, 2013, injury. Ultimately, I accepted the unrebutted expert opinion of Dr. Taylor with respect to claimant's right wrist injury, and found claimant sustained permanent disability as a result of the October 31, 2013, injury. I therefore found claimant carried her burden of proving she sustained a first qualifying injury on or about October 31, 2013.

Although the right wrist injury had minimal impact or effect on claimant's earning capacity prior to the August 1, 2018, work injury, Dr. Taylor opined that claimant has ongoing issues within the right wrist. Dr. Taylor assigned a five percent permanent impairment to claimant's right upper extremity as a result of the 2013 injury. While it is likely claimant's permanent impairment is less than the five percent assigned by Dr. Taylor, the 2017 amendments to the Iowa Workers' Compensation Act restrict my ability to accept an impairment rating that is not expressly provided by a physician. As such, I found claimant carried her burden of proving she sustained five percent permanent impairment of the right upper extremity as a result of the October 31, 2013, injury.

Having found and concluded that claimant carried her burden of proving

permanent disability to the right wrist as a result of the October 31, 2013, injury, as well as permanent disability to the left wrist as a result of the August 1, 2018, work injury, I conclude that claimant carried her burden of proving a compensable claim against the Second Injury Fund. Iowa Code section 85.64.

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1979).

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). The analysis now also requires consideration of claimant's proximity to retirement.

Compensation for industrial disability shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34. However, the Second Injury Fund is entitled to a credit for all permanent disability attributable to either of the qualifying scheduled member injuries.

In this case, I found that Mrs. Heister sustained 10 percent loss of earning capacity as a result of the combined effects of the first and second qualifying injuries. This is equivalent to 50 weeks of permanent partial disability benefits. I concluded the employer owes claimant 12.5 weeks of permanent disability benefits for the August 1, 2018, left wrist injury. I found claimant sustained five percent permanent impairment of the right upper extremity as a result of the 2013 injury. Five percent of the right arm is equivalent to 12.5 weeks of permanent disability benefits.

Therefore, I conclude that the Second Injury Fund is entitled to 25 weeks of credit against the industrial disability award. Reducing the 50 weeks by the 25-week credit, I conclude that claimant is entitled to an award from the Second Injury Fund in the amount of 25 weeks of benefits.

Second Injury Fund's benefits commence upon the expiration of the employer's obligation to pay benefits for the second injury. Iowa Code section 85.64(1).

The parties dispute the rate at which claimant's weekly benefits should be paid. Both parties calculate their respective rates utilizing Iowa Code section 85.36(6) as the applicable code section. Claimant asserts an average weekly wage of $396.00, with a corresponding workers' compensation rate of $282.48. This rate calculation only includes weeks in which claimant worked 70 or more hours prior to the date of injury. In contrast, defendants assert an average weekly wage of $352.00, with a corresponding workers' compensation rate of $253.21. This rate calculation excludes only the pay period ending on May 13, 2018.

Section 85.36(6) states, "[i]f the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings."

The Iowa Supreme Court provided an in-depth analysis of what qualifies as "customary earnings" in the case of Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010). Ascertainment of an employee's customary earnings does not turn on a determination of what earnings are guaranteed or fixed; rather, it asks simply what earnings are usual or typical for that employee [...] An employee need not justify the weekly variance with a particular explanation. The amount of the variance alone, by the magnitude of its departure from the usual earnings of the employee, may suffice to justify the exclusion of a week's earnings from the weekly rate calculation. (Id.).

In Jacobson, the commissioner averaged the earnings of the claimant truck driver for thirty weeks prior to the injury. The commissioner then focused on the thirteen weeks of earnings prior to the injury, throwing out three weeks in which earnings were markedly less than average. The Supreme Court of Iowa rejected the employer's argument that it was irrational to exclude the lowest weeks without also excluding the highest weeks. In that particular case, the high weeks were not unusually high when compared to the rest of the claimant's earning history.

The test to determine whether a week is representative is whether the claimant's earnings during each particular week was customary for that particular employee given his or her earning history as a whole.

Claimant contends the paychecks for the weeks ending on March 17, 2018, April 29, 2018, May 13, 2018, May 27, 2018, and July 8, 2018 are abnormally low and not representative of her customary earnings. Claimant contends her customary earnings for a pay period are those reflected by at least a 70-hour pay period, or at least $700.00.

Analyzing all of the wage records in evidence, the mean hours worked by claimant is 65.12. The median hours worked by claimant is 67.60. Of the 26 pay periods in evidence, claimant worked 70 or more hours 11 times (12 if you round 69.93 up to 70). Of the 14 pay periods that immediately precede the date of injury, claimant worked 70 or more hours just three times.

Given this information, I find the pay periods ending on July 8, 2018, May 27, 2018, April 29, 2018, and March 17, 2018, are representative of claimant's customary earnings. Defendants assert the pay period ending on July 22, 2018, is not representative of claimant's customary earnings as it is abnormally high. I tend to agree with defendants in this regard; however, defendants nevertheless included the pay period in their rate calculation and ask this agency to find the same reasonable.

While the evidentiary record arguably supports a lower rate calculation, I find defendants' rate calculation is nevertheless reasonable and fairly reflects claimant's earnings immediately prior to the date of injury. As such, I find claimant's average weekly

wage to be $352.00 (technically $351.87). Relying upon the parties' stipulations that claimant is married and entitled to two exemptions, and using the Iowa Workers' Compensation Manual with effective dates of July 1, 2018, through June 30, 2019, I determine the applicable weekly rate for benefits in this case is $253.21.

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant established entitlement to benefits from the employer. I conclude it is appropriate to assess costs in some amount. Exercising my discretion, I conclude that it is appropriate to assess claimant's filing fee of $100.00, as well as the service fees associated with sending certified mail to the employer. I also assess the costs associated with the vocational report, which total $536.50. No costs will be assessed against the Second Injury Fund.

ORDER

THEREFORE, IT IS ORDERED:

The employer and insurance carrier shall pay claimant twelve and one-half (12.5) weeks of permanent partial disability benefits commencing on February 11, 2019.

The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

The employer and insurance carrier shall be entitled to a credit for all weekly benefits paid to date.

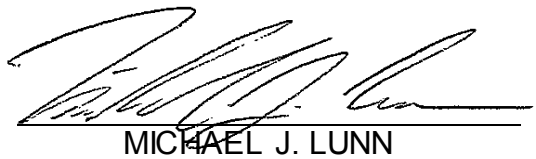
Defendants shall reimburse claimant's costs as set forth in this decision.

The employer and insurance carrier 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.

The Second Injury Fund shall pay claimant twenty-five (25) weeks of permanent partial disability benefits commencing on May 9, 2019.

All weekly benefits shall be paid at the stipulated rate of two hundred fifty-three and 21/100 dollars ($253.21).

Signed and filed this 20th day of May, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Christopher Fry (via WCES)

Tansha Clarke (via WCES)

Meredith Cooney (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.