BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JENNIFER ASKVIG,	FILED	
Claimant,	JUL 11 2018	File No. 5059459
vs.	WORKERS COMPENSATION	ARBITRATION
SNAP-ON LOGISTICS COMPANY,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.30, 1402.40, 1801 1803.1, 2401, 2501, 2502, 2907

Claimant Jennifer Askvig filed a petition in arbitration on August 24, 2017, alleging she sustained cumulative injuries to her right upper extremity, including her shoulder, her back, anxiety, and depression, and a possible aggravation, acceleration, lighting up, or worsening of preexisting conditions, while working for the defendant, Snap-On Tools Logistics Company ("Snap-On"), which manifested on or about January 6, 2017. Snap-On filed an answer on August 30, 2017, denying Askvig sustained a work injury, and asserting lack of notice under Iowa Code section 85.23, as an affirmative defense. Askvig filed a motion to amend petition, which was granted, striking her claims that she sustained a work related injury to her back, depression, and anxiety, which was granted on March 15, 2018. Snap-On filed an answer to the amended petition, denying Askvig sustained a work injury and reasserting lack of notice as an affirmative defense.

An arbitration hearing was held on April 16, 2018, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Mark Soldat represented Askvig. Askvig and her husband, Chad Askvig, appeared and testified. Attorney Joseph Quinn represented Snap-On. Jodie Rath, the human resources manager for Snap-On, appeared and testified on behalf of Snap-On. Joint Exhibit ("JE") 1, pages 1 through 125, Exhibits 1 through 5, and A through J were admitted into the record. At hearing I informed the parties Exhibit 3 was illegible and Askvig agreed to submit a legible copy. The record was held open through May 18, 2018, for the receipt of post-hearing briefs only and the legible copy of Exhibit 3.

Askvig submitted a revised, legible, copy of Exhibit 3, which was marked as Exhibit 5. At hearing Askvig's medical bills were marked as Exhibit 5. I remarked the replacement exhibit, the employee attendance record, as Exhibit 3, and included the additional page with the original copy of Exhibit 3, and it was admitted into the record.

Following the hearing Snap-On filed a motion to supplement the joint medical exhibits, which was resisted by Askvig. On May 15, 2018, I issued a ruling denying the motion to supplement the joint medical exhibits.

The briefs were timely received from the parties on May 18, 2018, and the record was closed. Askvig filed a substituted brief on May 21, 2018, after the record was closed. No motion was filed to extend the briefing deadline. The substituted brief was not timely filed. It is disregarded and is not considered in this decision.

After the hearing I also discovered the pages in Exhibit J are labeled all "J-83." The bottom of each page references a page of 31 "sheets." The individual sheet numbers will be used for references to Exhibit J.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Snap-On raised the affirmative defense of lack of timely notice under Iowa Code section 85.23, and waived all other affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Snap-On and Askvig at the time of the alleged injury.

2. At the time of the alleged injury Askvig was married and entitled to two exemptions and the parties believe her weekly rate is $957.89.[1]

3. Prior to the hearing Askvig was paid no weeks of compensation.

ISSUES

1. Did Askvig sustain an injury, the manifestation date of which was on or about January 31, 2017, or alternatively on January 30, 2017, or alternatively on January 20, 2017, and the discovery date of which was on or about May 16, 2017, or alternatively on or about April 18, 2017, or alternatively on or about March 21, 2017, or alternatively on or about January 30, 2017?

2. Is the alleged injury a cause of temporary disability during a period of recovery?

3. Is the alleged injury a cause of permanent disability?

4. Is Askvig entitled to temporary total or healing period benefits from May 25, 2017 through January 7, 2018?

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[1] At hearing Askvig disputed Snap-On's rate calculation. In her post-hearing brief Askvig agreed her weekly rate is $957.89.

5. What is the nature of the injury?

6. Has Askvig sustained a scheduled member disability to her right arm, or an industrial disability?

7. Is Askvig entitled to payment of medical expenses?

8. Is Askvig entitled to recover the cost of an independent medical examination?

9. Is Snap-On entitled to a credit of $9,800.00 for short-term disability benefits paid to Askvig?

10. Is Snap-On entitled to a credit for medical bills paid for by group insurance?

11. What is the interest rate for accrued benefits?

12. Should costs be assessed against either party?

FINDINGS OF FACT

Askvig lives with her husband in Bradgate, Iowa. (Transcript, pages 10-11; Exhibits 2, p. 3; J, p. 2) The Askvigs married in 2016. (Tr., p. 11) At the time of the hearing Askvig was thirty-five. (Ex. J., p. 2) Askvig is right-hand dominant. (Tr., p. 34)

Askvig graduated from Marshalltown Senior High School in 2000. (Exs. F, p. 51; J, p. 2) After graduating from high school she attended AIB College of Business for two years, but she did not graduate. (Exs. F, p. 51; J, p. 3; 2, p. 4) Askvig then attended Marshalltown Community College for a year, and obtained a certified nursing assistant certificate and she took additional general education classes, but she did not complete a degree program. (Exs. F, p. 51; J, p. 3; 2, p. 4)

Askvig has experience working as a checker, bagger and stocker for a grocery store, office clerk and handler of accounts payable and receivable for an electric supply company, bank teller, receptionist and handler of medical records for a medical clinic, certified nursing assistant and medication assistant, box maker/label maker for a meat packing company, home health care worker, cleaner, and fast-food worker. (Exs. F, pp. 51-53; J, pp. 3-4)

On June 29, 2014, Snap-On hired Askvig to work in the form weld department at the Algona plant. (Exs. F, p. 53, J, p. 4; 2, p. 10) Snap-On manufactures tool boxes in Algona. (Tr., p. 32) Snap-On paid Askvig $19.00 per hour. (Ex. F, p. 53) Prior to working for Snap-On, Askvig earned between $5.25 and $13.00 per hour. (Ex. F, pp. 51-53) As a condition of her employment with Snap-On, Askvig underwent a pre-employment exam with Kenton Moss, M.D., with Kossuth Regional Health Center, which she passed. (JE 1, p. 3)

In the form weld department Askvig cut and formed metal into side panels or other objects for tool boxes and welded the parts together. (Tr., p. 32) Askvig relayed she did not have any problems with her job when she first started, other than being "achy the first couple of months." (Tr., p. 32)

During her deposition in March 2018, Askvig testified approximately one to two months after she commenced her employment with Snap-On in 2014, she spoke with Kathy Reddel, in safety, and told Reddel she was experiencing numbness and pain in both of her hands. (Ex. J, p. 9) Askvig relayed Reddel sent her to a massage therapist and physical therapist at Snap-On, and she received braces for her hands. (Ex. J, p. 9)

In May 2015 Askvig moved from second shift to first shift, and she continued to perform the same duties. (Tr., p. 32) In November 2015 Snap-On acquired a new top machine that was placed in Askvig's group, and all of the employees learned how to use it in early 2016. (Tr., p. 33; Ex. J, p. 5) Snap-On assigned Askvig to work on the top machine every day. (Tr., p. 33) Askvig reported when she worked on the top machine,

> [a]s long as they were long runs, there was a parts person that would bring in pallets of parts that were put on a cart, of sheet metal, and you would pull the sheet metal – one piece of sheet metal off of that pallet onto the machine, then put fixtures that were stored in a toolbox. Depending what top you were doing, you brought those fixtures over. You would put them in the assigned spots on the machine. You would put smaller parts on top of it that magnetized them to it, and then you would push buttons, and it would turn around and weld the top.

(Tr., p. 33) Askvig relayed she did not have physical problems performing the job and she did not feel like it was too demanding, but it was constant, and she made 100 to 200 tops per day. (Tr., pp. 34-35) Askvig testified over time she become more "hurt, achy, and sore" and reported she thought it was because she was overweight and getting older. (Tr., p. 38)

Askvig's husband testified from 2014 through the first half of 2016 Askvig was very energetic and outgoing, she loved helping out in the yard, fishing, and spending time with friends. (Tr., pp. 11, 13) Askvig's husband relayed that in October 2016 Askvig became "real depressed – noticing different things of people that were working around her, and she took it as they were talking about her, and she just didn't want to go out and do anything." (Tr., pp. 13-14) Askvig testified she had a falling out with two friends at work in October 2016. (Tr., p. 30) And at that time she felt pain, but reported, "[i]t didn't register – like I said, when I first felt the pain I thought I was old and overweight, and I was just going to be hurting the rest of my life." (Tr., p. 44)

During cross-examination Askvig's husband reported in 2016 Askvig started complaining more about physical problems and she believed her work at

Snap-On was aggravating her conditions. (Tr., pp. 21-22) (Tr., p. 22) Askvig used FMLA leave intermittently while treating for depression and anxiety starting in October 2016. (Tr., pp. 44-45)

On November 11, 2016, Askvig attended an appointment with Dr. Moss, complaining of left fourth and fifth finger numbness for one week, and intermittent numbness of the left hand for over a year. (JE 1, p. 4) Dr. Moss assessed Askvig with numbness of the left hand and arranged for nerve conduction studies. (JE 1, p. 4) Rajinder Verma, M.D., conducted the nerve conduction studies on November 17, 2016, and listed an impression of "mild carpal tunnel syndrome on the left." (JE 1, pp. 81-82)

On December 1, 2016, Askvig attended an appointment with Michael Lampe, D.O., with Kossuth Regional Health Center. (JE 1, p. 5) Dr. Lampe diagnosed Askvig with carpal tunnel syndrome of the left upper limb, and anxiety. (JE 1, p. 5)

Askvig testified she used methamphetamine a couple times in January 2017 and once in February 2017 because

> I was really depressed all the time, and the pain had started to get to the point where I couldn't manage it with just ibuprofen or Biofreeze. And I made the stupid mistake of thinking that that might help. At one point I was on muscle relaxers. I wasn't able to take those at work due to being tired. They make me very sleepy. And so that rationalized it in my head that that would help me stay awake.

(Tr., pp. 30-31)

Askvig attended an appointment with Josiah Brinkley, M.D., with Kossuth Regional Health Center on January 30, 2017, complaining of right shoulder and upper back pain that started over the weekend and wrist pain, and "some carpal tunnel in her right hand with numbness over the first second third digits." (JE 1, p. 6) Dr. Brinkley documented Askvig was

> having right shoulder and upper back pain started over the weekend she thinks it may have started when she slipped and had to grab something with her left hand. Symptoms are moderate. Movement makes it worse lifting makes it worse nothing seems to make it better yet. This episode of slipping and grabbing is what she thinks hurt her back and made her carpal tunnel and right hand worse it happened at work.

(JE 1, p. 6) Dr. Brinkley assessed Askvig with carpal tunnel syndrome and shoulder pain, prescribed wrist braces, ordered nerve conduction studies for Askvig's right wrist, prescribed Flexeril and prednisone for her shoulder and upper back, and ordered a physical therapy consultation. (JE 1, p. 6)

During the hearing Askvig testified she slipped at work on some water and "slid just a leg out, not necessarily fell all the way multiple times," and she told Dr. Brinkley her pain increased over the weekend, not that it started over the weekend. (Tr., pp. 62-64) Askvig acknowledged on cross-examination she did not tell Dr. Brinkley she slipped at work and she did not report it to Snap-On, noting, "[i]f I reported every slip my foot did at work [her supervisor would] be piled up with multiple paperwork, so no, I didn't." (Tr., pp. 64-65)

Askvig's attorney asked her whether she had problems with her right wrist before she worked at Snap-On and Askvig responded, "[v]ery seldom or occasionally I would get number [*sic*] – especially like when winter driving, I'd get very, very tense when driving, and I'd grip the steering wheel really tight, I would have some pain or numbness in it, but it was very seldom. There's no steadiness about it, just --." (Tr., pp. 93-94)

Askvig underwent electromyography with Shane Meschke, PT, on February 1, 2017. (JE 1, p. 37) The report provides "[m]oderate [right] median nerve neuropathy @ wrist." (JE 1, p. 37)

Askvig continued to have problems with her mental health. (Tr., p. 51) On February 13, 2017, Askvig told her husband she had thought about driving off a bridge and she had been self-medicating with methamphetamine. (Tr., pp. 15-16; 51) Askvig entered inpatient mental health treatment the following week for anxiety and depression. (Tr., p. 52) Askvig was excused from work from February 21, 2017, through March 3, 2017, due to her mental health conditions. (JE 1, pp. 9-13) Kossuth Regional Health Center documented the injury was not work related. (JE 1, p. 11)

On March 21, 2017, Askvig attended an appointment Michael Crane, M.D., an orthopedic surgeon. (JE 1, p. 82) Dr. Crane documented,

> Jennifer Askvig is being seen today for numbness and tingling in both hands. Lately the right hand has been more troublesome than the left hand. It started before she started working at Snap-on 3 years ago. She noticed it started when she was working in a meat packing plant in Marshalltown.
>
> It tends to bother her when she is doing a lot. She has had electromyograms (EMGs). Interestingly, she had the left hand EMGs done in Mason City by Rajinder K. Verma, MD, just mild neuropathy on the left. Then she had EMGs done out here in Algona which showed a little more significant on the right hand. She is wearing splints and it is helping.

(JE 1, p. 82) Dr. Crane listed an impression of right and left carpal tunnel syndrome, and ordered Askvig to continue to wear her splints. (JE 1, p. 83) Askvig testified that

when she saw Dr. Crane in March 2017, she knew for the first time she had a condition that was going to have an impact on her ability to work. (Tr., p. 50)

Askvig testified she spoke with Reddel after her appointment with Dr. Crane

> about insurance, if my insurance wasn't going to cover [the right carpal tunnel surgery] if they came back and said it was work comp, what did I need to do. At that point in the office she started getting very firm, almost rude to me, to where I broke down in her office crying, and she was asking me why I was crying, it's not something to cry about. And I proceeded to tell her I had anxiety and depression and was on Ativan, and she began to become nicer.

(Tr., p. 70) Askvig acknowledged she did not report the conversation to Snap-On's attorney during her deposition a few weeks before the hearing. (Tr., p. 71)

On April 18, 2017, Askvig returned to Dr. Crane, complaining her right hand was still painful and she was experiencing numbness and tingling. (JE 1, p. 84) Dr. Crane listed an impression of "significant carpal tunnel syndrome" that had not improved with conservative care, and agreed to schedule Askvig for surgery. (JE 1, p. 85) Dr. Crane restricted Askvig from working. (JE 1, p. 85) Askvig left Snap-On to have surgery and she did not return until January 2018. (Tr., pp. 73-74)

On May 8, 2017, Askvig attended an appointment with Rachel Venteicher, D.O. with Kossuth Regional Health Center, complaining of right shoulder pain. (JE 1, p. 13) Dr. Venteicher documented, "[o]ver the weekend, she turned in her car to look at her son. She felt a tightness in her neck. Her shoulder has been bothering her since then." (JE 1, p. 13) Dr. Venteicher assessed Askvig with shoulder pain and prescribed Flexeril and a physical therapy consult. (JE 1, p. 13)

During a follow-up appointment with Dr. Lampe on May 16, 2017, Dr. Lampe documented, "[s]he developed severe right shoulder pain and took methamphetamine intravenously to help with pain on right 5/14. She underwent testing at work and was diagnosed with the recent polysubstance abuse. She denies any other illicit drug use." (JE 1, p. 15) Askvig relayed her right shoulder pain was severe, increased with activity, and improved with rest. (JE 1, p. 15) Dr. Lampe assessed Askvig with shoulder bursitis and prescribed physical therapy and dexamethasone. (JE 1, p. 15)

Askvig underwent drug testing at work, which was positive for methamphetamine. (Ex. E, p. 46) Snap-On suspended Askvig for three days and referred her to the employee assistance plan for treatment as a condition for further employment with random drug testing up to six times in the first twelve months following her discharge from treatment. (Ex. E, p. 46)

On May 25, 2017, Askvig attended an appointment with Dr. Venteicher complaining of ongoing right shoulder pain. (JE 1, p. 16) Dr. Venteicher documented Askvig had taken a break from work, but returned a couple of days ago and her pain was better, but her shoulder hurts when she moves it. (JE 1, p. 16) Dr. Venteicher assessed Askvig with right shoulder pain, and documented she should use ice and ibuprofen while off work following carpal tunnel surgery. (JE 1, p. 16)

Dr. Crane cancelled Askvig's carpal tunnel surgery that was scheduled for May 30, 2017 because Askvig had a stab wound on the palm of her hand. (JE 1, pp. 17, 86) Dr. Crane performed a right carpal tunnel release on Askvig on June 13, 2017. (JE 1, pp. 48, 89) Following surgery Askvig received occupational therapy. (JE 1, pp. 49-51)

Askvig continued to complain of right shoulder pain, and Dr. Lampe ordered right shoulder magnetic resonance imaging. (JE 1, pp. 18-21)

On June 27, 2017, Askvig attended an appointment with Eric Potthoff, D.O., an orthopedic surgeon. (JE 1, p. 91) Dr. Potthoff documented:

> [t]he patient states she has had right shoulder pain for about 1 year in duration. Denies any injuries or falls. She states that she used to do a lot of heavy manual labor but this was rejected by Worker's [*sic*] Compensation. She has been treated conservatively. She takes Meloxicam as needed for pain otherwise oral steroids and Flexeril. She has undergone a course of physical therapy for 2 months. She admits to pain that has been worse over that [*sic*] last 6 months and does not think conservative care has helped.

(JE 1, p. 91) Dr. Potthoff reviewed Askvig's imaging, and listed an impression of a high-grade partial thickness rotator cuff tear of the right shoulder and acromioclavicular joint arthropathy of the right shoulder, asymptomatic on examination. (JE 1, p. 92) Dr. Potthoff discussed treatment options with Askvig and she elected to proceed with surgery. (JE 1, p. 92)

During a follow-up appointment on July 11, 2017, Dr. Crane released Askvig to return to regular duty without restrictions with respect to her right carpal tunnel syndrome. (JE 1, p. 94) Dr. Crane released Askvig from care. (JE 1, p. 94)

On July 17, 2017, Dr. Potthoff performed a diagnostic and operative arthroscopy of the right shoulder, debridement of the superior labrum, subacromial decompression, and mini-open rotator cuff repair on Askvig. (JE 1, pp. 95, 105)

Askvig testified she spoke with her attorney "[r]ight after my shoulder surgery." (Tr., p. 85) Snap-On's attorney inquired, "[s]o the first time Snap-on would have known that you were claiming these injuries to be work-related was when they received the

Petition in October of 2017?" (Tr., p. 85) Askvig responded, "[q]uite possible." (Tr., p. 85)

On August 1, 2017, Askvig attended a follow-up appointment with Dr. Potthoff. (JE 1, pp. 86, 96) Dr. Potthoff listed an impression of status post repair of high grade partial thickness rotator cuff tear of the right shoulder with debridement of labrum and subacromial decompression, ordered Askvig to keep her arm in a sling, and imposed restrictions of no driving or use of the right upper extremity. (JE 1, pp. 87, 97) Askvig received physical therapy, and continued to treat with Dr. Potthoff. (JE 1, pp. 98-101)

On January 2, 2018, Askvig attended an appointment with Dr. Potthoff and he documented she was "without complaints" and "not having any pain in the shoulder." (JE 1, p. 101) Dr. Potthoff documented Askvig had full active range of motion of the right shoulder, equal to the left in abduction and forward flexion, and he released her to return to work without restrictions on January 8, 2018. (JE 1, p. 102) When Askvig returned to work her supervisor assigned her to the sanding position. (Ex. J, p. 7)

John Kuhnlein, D.O., an occupational medicine physician, conducted an independent medical examination for Snap-On on February 21, 2018, and he issued his report in March 2018. (Ex. A) Dr. Kuhnlein's report is very detailed. (Ex. A) He spent significant time interviewing Askvig, and analyzing Askvig's job duties. (Ex. A) Dr. Kuhnlein reviewed Askvig's medical records, examined her, and performed nerve conduction studies. (Ex. A)

Dr. Kuhnlein causally related Askvig's right carpal tunnel syndrome to her work for Snap-On. (Ex. A, p. 12) Dr. Kuhnlein further found:

> I was also able to review the images of the top weld job. It appears that much of the job is below shoulder height if the images are accurate. There is some reaching at or above shoulder height, but not under a significant load. She could have carried boxes up to 55 pounds. The description states that the employer he [*sic*] can get help in moving for boxes, or if the boxes are awkward to lift, she may still have lifted the heavy boxes. If the images are accurate, and the description of the top weld job is accurate, the job would not be a significant more than minor factor in the development of her right shoulder condition on a cumulative basis. There would not be significant loading frequent enough while performing the job. There is no history of a sudden injury to the shoulder as might be expected when lifting the heavy boxes. With the history Ms. Askvig presents, I believe there is enough uncertainty in combination with the provided job analysis that I cannot state that the shoulder symptoms were related to her work for Snap-On Tools within reasonable medical certainty. There also was the intervening incident where she turned to look at her son (see Dr. Venteicher, May 8, 2017), with a note describing

> the onset of neck and shoulder tightness. If other information becomes available, I would be happy to review it.

(Ex. A, p. 12) Dr. Kuhnlein found Askvig reached maximum medical improvement for carpal tunnel syndrome on or about December 13, 2017, six months after surgery, and recommended no additional care for her carpal tunnel syndrome and recommended she not wear splints at work because the splints "may make her condition recur." (Ex. A, p. 13) Dr. Kuhnlein recommended no work restrictions. (Ex. A, p. 14)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Kuhnlein opined, "[t]urning to the instructions on page 495, Ms. Askvig has a normal examination in the right hand, with normal nerve conduction. At this time, there is no objective basis for impairment rating, following the instructions on page 495." (Ex. A, p. 13) Dr. Kuhnlein assigned a three percent right upper extremity impairment for the right shoulder, which he converted to a two percent whole person impairment. (Ex. A, p. 13) Dr. Kuhnlein assigned no impairment for cervical myofascial pain, noting "this appears to have been related to the right shoulder condition based on the response to surgery." (Ex. A, p. 13)

Mark Kirkland, D.O., an orthopedic surgeon, conducted an independent medical examination for Askvig on February 26, 2018. (Ex. 1) Dr. Kirkland examined Askvig and reviewed her medical records. (Ex. 1) Dr. Kirkland found Askvig reached maximum medical improvement for her right shoulder on January 2, 2018 and for her right carpal tunnel release on July 11, 2017. (Ex. 1, p. 13) Dr. Kirkland noted "[m]ost of the work was done at waist to shoulder level or above shoulder level." (Ex. 1, p. 8) This is contrary to the finding of Dr. Kuhnlein, who noted, [i]t appears that much of the job is below shoulder height if the images are accurate. There is some reaching at or above shoulder height, but not under a significant load." (Ex. A, p. 12)

With respect to causation, Dr. Kirkland found:

> 3. It is my opinion that the surgery performed for Jennifer's right shoulder and her right hand, at the very least, were a significant aggravation of a preexistent problem.
>
> 4. It is my opinion that the need for right shoulder surgery and right carpal tunnel release, that the sole cause of surgery is related to the work performed at Snap-On-Tools after questioning Jennifer about her job mechanism.

(Ex. 1, p. 13) Dr. Kirkland did not provide any additional analysis concerning Askvig's job duties and how her job duties aggravated a preexisting problem.

Dr. Kirkland recommended no restrictions, and opined:

> Jennifer has a 3% impairment to her right upper extremity secondary to lack of shoulder flexion, 1% impairment secondary to lack of shoulder extension, 1% impairment secondary to lack of abduction, and 3% impairment due to loss of internal rotation. This gives Jennifer an 8% impairment to her right upper extremity secondary to range of motion and loss. These values are obtained from figure 16-40, 16-43, and 16-46 of the American Medical Association Guides to the Evaluation of Permanent Impairment 5th Edition.
>
> Jennifer still complains of weakness in her right hand and I did state that she did have atrophy of the thenar muscles. It is my opinion that secondary to the surgery and subjective and objective findings that Jennifer has a 5% impairment to her right hand. A 5% impairment to the right hand converts to 5% of the upper extremity.
>
> Combining 8 and 5 give a combined value of 13%. Jennifer has a 13% impairment to the right upper extremity. A 13% impairment to the right upper extremity converts to 8% of the whole person. This is in accordance with the AMA Guides 5th Edition.

(Ex. 1, p. 14)

Snap-On terminated Askvig's employment on March 21, 2018, for habitual tardiness or repeated absences from work. (Ex. E, p. 42) Askvig applied for unemployment insurance benefits, and she has applied for work at banks and convenience stores. (Tr., pp. 20-21, 59)

Askvig's husband testified after her surgeries her pain lessened significantly, she is able to sleep through the night, and she can perform her normal daily routine without pain. (Tr., pp. 18-19) Askvig also relayed her pain has lessened since she underwent her surgeries. (Tr., pp. 54-55)

Askvig alleges she sustained injuries to her right wrist and shoulder while working for Snap-On, which manifested on January 20, 2017, January 30, 2017, January 31, 2017, and the discovery date of which was on or about January 30, 2017, March 21, 2017, April 18, 2017, or May 16, 2017. (Hearing Report) At hearing Askvig testified there were no specific injury dates, that the dates relate to medical appointments. (Tr., pp. 61-62)

Rath, the human resources manager for Snap-On, testified she is involved in workers' compensation injuries occurring at Snap-On. (Tr., pp. 97-98) Rath testified,

> Jennifer came in and said that she was going to be needing to go out for a carpal tunnel surgery, and she requested that we get the leave paperwork for her. And I asked at that point, when are you going out, and is this

> work-related? She said, no it's not from here. It's from outside. It's not from here, were her exact words; it's not from here. I said okay, then, we'll go short term-disability, because that's the route, that's the crossroads. Is it work comp? Is it medical?

(Tr., p. 98) Rath reported Snap-On employees with work-related injuries do not receive short-term disability payments and their medical bills are not paid through group health insurance. (Tr., pp. 99, 101) Rath reported the conversation she had with Askvig occurred two to four weeks before Askvig's carpal tunnel surgery. (Tr., p. 99) Rath testified she did not understand at any time that Askvig was reporting a work-related injury to her until Snap-On received the petition, which was served on August 30, 2017. (Tr., pp. 100-01)

CONCLUSIONS OF LAW

I. Arising Out of and in the Course of Employment

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of the employer.*

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W.719, 723 (1929)).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

This is a denied claim. Two physicians have provided expert opinions on causation, Dr. Kuhnlein, an occupational medicine physician, and Dr. Kirkland, an orthopedic surgeon. Drs. Kuhnlein and Kirkland both causally related Askvig's right carpal tunnel syndrome to her work with Snap-On. Dr. Kirkland causally related Askvig's right shoulder condition to her work at Snap-On and Dr. Kuhnlein found

Askvig's right shoulder condition was not causally connected to her work with Snap-On. I find Dr. Kuhnlein's opinion to be the most persuasive.

While Dr. Kirkland has superior training, as an orthopedic surgeon to Dr. Kuhnlein, neither physician provided any treatment to Askvig. Dr. Kuhnlein's report is more detailed than Dr. Kirkland's report. Dr. Kuhnlein spent significant time interviewing Askvig concerning her alleged injuries and job duties. He also analyzed Askvig's job duties in rendering his causation opinion.

Dr. Kirkland's report appears to be based on flawed information. Dr. Kirkland noted "[m]ost of the work was done at waist to shoulder level or above shoulder level." (Ex. 1, p. 8) This is contrary to the finding of Dr. Kuhnlein, who noted, "[i]t appears that much of the job is below shoulder height if the images are accurate. There is some reaching at or above shoulder height, but not under a significant load." (Ex. A, p. 12) There was no evidence presented at hearing the information provided to Dr. Kuhnlein was inaccurate. I find Dr. Kuhnlein's opinion more persuasive than Dr. Kirkland's opinion. Askvig has not established her right shoulder condition and need for treatment are causally connected to her job duties for Snap-On.

II. Notice

Askvig contends she sustained a work injury, the manifestation date of which was on or about January 31, 2017, or alternatively on January 30, 2017, or alternatively on January 20, 2017, and the discovery date of which was on or about May 16, 2017, or alternatively on or about April 18, 2017, or alternatively on or about March 21, 2017, or alternatively on or about January 30, 2017. Snap-On avers Askvig's claim should be dismissed for failure to provide timely notice under Iowa Code section 85.23. Askvig contends Snap-On has not met its burden of proof she failed to provide timely notice.

Iowa Code section 85.23 (2015) provides:

> Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the alleged occurrence of the injury, no compensation shall be allowed.

The purpose of the notice provision is to afford the employer the opportunity to investigate the circumstances of the injury when the information is fresh. Johnson v. Int'l Paper Co., 530 N.W.2d 475, 477 (Iowa Ct. App. 1995). "Actual knowledge must include information that the injury might be work-connected." Id. The employer bears the burden of proving the affirmative defense. DeLong v. Iowa State Highway Comm'n, 299 Iowa 700, 703, 295 N.W.2d 91, 92 (1940).

Askvig reported her arms were achy a few months after she commenced her employment with Snap-On in 2014, she received braces, and continued to wear braces during her employment.

Askvig testified she spoke with Reddel after her appointment with Dr. Crane on March 21, 2017,

> about insurance, if my insurance wasn't going to cover [the right carpal tunnel surgery] if they came back and said it was work comp, what did I need to do. At that point in the office she started getting very firm, almost rude to me, to where I broke down in her office crying, and she was asking me why I was crying, it's not something to cry about. And I proceeded to tell her I had anxiety and depression and was on Ativan, and she began to become nicer.

(Tr., p. 70) Askvig did not report the conversation with Reddel during her deposition a few weeks before the hearing. When Askvig testified concerning the conversation at hearing, Snap-On did not call Reddel as a rebuttal witness or request the opportunity to supplement the record with a deposition from Reddel. While the evidence Snap-On received actual notice of Askvig's claim is weak, Snap-On bears the burden of proving the affirmative defense. Snap-On has not met its burden of proof.

III. Extent of Disability

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2)(2015). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u). "Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury." Bergeson, 526 N.W.2d at 547.

Carpal tunnel syndrome is included as a scheduled loss. Iowa Code § 85.34(2)(m); Holstein Elec. & Integrity Mut. Ins. Co. v. Breyfogle, 756 N.W.2d 812, 813 (Iowa 2008). The schedule provides a maximum award of 250 weeks of compensation. Iowa Code § 85.34(2)(m). As discussed above, I found Dr. Kuhnlein's causation opinion most persuasive. Dr. Kuhnlein opined Askvig has not sustained a permanent impairment to her right upper extremity. Askvig has not established she sustained a permanent impairment to her right upper extremity.

IV. Temporary Benefits

Iowa Code section 85.33 (2015) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). "Stabilization of the employee's condition 'is the event that allows a physician to make the determination that a particular medical condition is permanent.'" Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. As analyzed above, Askvig has not established she sustained a permanent impairment, therefore, if she is entitled to temporary benefits she is entitled to temporary total and not healing period benefits.

Temporary total disability benefits are payable to an employee "until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first." Iowa Code § 85.33(1). Askvig was off work from May 25, 2017, through January 8, 2018, when she returned to work following right shoulder surgery. As analyzed above, Askvig has not established her right shoulder condition is causally related to her work with Snap-On.

Dr. Crane restricted Askvig from working prior to and following right carpal tunnel syndrome. During a follow-up appointment on July 11, 2017, Dr. Crane released Askvig to return to regular duty without restrictions with respect to her right carpal tunnel syndrome, and he released her from care. (JE 1, p. 94) When Dr. Crane released Askvig to return to regular duty her healing period ended. Askvig is entitled to temporary total benefits from May 25, 2017 through July 11, 2017, at the rate of $957.89 per week.

V. Credit for Short Term Disability Payments

At hearing Snap-On alleged it was entitled to a credit for short-term disability payments made to Askvig totaling $9,800.00. Askvig rejects Snap-On's assertion. Snap-On did not address the credit issue in its post-hearing brief.

Iowa Code section 85.38(2) provides:

> 2. *Benefits paid under group plans.*
>
> *a.* In the event the employee with a disability shall receive any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter, chapter 85A, or chapter 85B, then the amounts so paid to the employee from the group plan shall be credited to or against any compensation payments, including medical, surgical, or hospital, made or to be made under this chapter, chapter 85A, or chapter 85B. The amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter or an occupational disease under chapter 85A or an occupational hearing loss under chapter 85B.

The Iowa Supreme Court has held that the purpose of Iowa Code section 85.38(2) is to preclude an employee with a disability from receiving a double recovery of workers' compensation benefits and group disability plan benefits provided by the employer. State v. Erbe, 519 N.W.2d 812, 815 (Iowa 1994).

A credit for non-occupational disability benefits applies to any workers' compensation payments that are deemed payable. Iowa Code § 85.38(2). An employer seeking the credit bears the burden of proving entitlement to the credit. Miller v. Maintainer Corp. of Iowa, Inc., File No. 5020192 (App. Dec. 2, 2009). To meet this burden Snap-On must prove: (1) the benefits were received under a group plan; (2) contribution to the plan was made by the employer; (3) the benefits should not have been paid if workers' compensation benefits were received; and (4) the amount to be credited or deducted from payments made or owed under Iowa Code chapter 85. Id.

Exhibit H contains a record of short-term disability benefits paid to Askvig. Rath testified Snap-On pays for short-term disability as a benefit to its employees. (Tr., pp. 98-99) Snap-On did not produce a copy of the short-term disability plan at hearing. Exhibit H contains documentation related to Askvig's right carpal tunnel syndrome, and for her right shoulder. (Ex. H, pp. 68-71) Dr. Crane released Askvig to return to work on July 11, 2017. Any credit for short-term disability benefits Snap-On is entitled to ended when Askvig was released to return to work for her right carpal tunnel syndrome.

For many years this agency has held that an employer is entitled to a credit for the net remaining after deducting payroll and income taxes from disability payments made under a group plan. Harney v. Univ. of Iowa, File No. 5036605 (App. June 17, 2014); King v. Marion Indep. Cmty. Sch. Dist., File 5036224 (App. June 10, 2013); Waters v. Univ. of Iowa Hosp. & Clinics, File No. 1159901/1205026 (App., January 20, 2001); Taylor v. Univ. of Iowa, File No. 886089 (App., May 18, 1993); Preul v. Farmland Foods, File No. 879940 (Arb. July 6, 1990); Beller v. Iowa State Penitentiary, File No. 799401 (Arb. January 23, 1990). Snap-On provided no analysis in its post-hearing brief how it calculated the amount of the credit. Snap-On did not explain the payroll detail set forth in Exhibit H or the net amount paid to Askvig. Snap-On has not met its burden of establishing the credit it seeks.

VI. Medical Bills and Medical Mileage

Askvig seeks to recover medical bills and medical mileage set forth in Exhibits 4 and 5. Snap-On denies Askvig is entitled to recover the cost of her medical bills and medical mileage.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

The Iowa Supreme Court has held an employer may be responsible for unauthorized care "upon proof by a preponderance of the evidence that such care was reasonable and beneficial," meaning "it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Gwinn, 779 N.W.2d at 206. Rule 876 Iowa Administrative Code 8.1(2) provides for recovery of medical mileage.

Askvig seeks to recover medical expenses from Snap-On. As analyzed above, Askvig has not established her right shoulder condition and need for treatment are

causally connected to her employment with Snap-On. Askvig has established her right carpal tunnel syndrome and need for treatment are causally connected to her employment with Snap-On. Askvig is entitled to recover the cost of the treatment for her right carpal tunnel syndrome, but not for her right shoulder condition or any other condition. Snap-On is entitled to a credit for benefits paid by Askvig's group health insurance.

VII. Costs

Askvig seeks an award of costs in this case. Snap-On did not address costs in its post-hearing brief. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

A. Independent Medical Examination and Report

Askvig seeks to recover the $1,500.00 cost of Dr. Kirkland's independent medical examination, and the $1,835.00 cost of his report. After receiving an injury, the employee, if requested by the employer is required to submit to examination at a reasonable time and place, as often as reasonably requested to a physician, without cost to the employee. Iowa Code § 85.39. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes the evaluation is too low, the employee "shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice . . . ." Id. Snap-On retained Dr. Kuhnlein to conduct an independent medical examination of Askvig. Askvig then retained Dr. Kirkland to conduct an independent medical examination, in compliance with the requirements of the statute.

In the case of Des Moines Area Regional Transit Authority v. Young, the Iowa Supreme Court held:

> [w]e conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

867 N.W.2d 839, 846-47 (Iowa 2015). Dr. Kirkland's bill is itemized. (Ex. 1, p. 15) There was no evidence presented at hearing challenging the amount of Dr. Kirkland's report fee. Under Young, Askvig is entitled to recover the $1,500.00 cost of Dr. Kirkland's independent medical examination, and the $1,835.00 cost of his report. Id.

B. Additional Costs

Askvig also seeks to recover $100.00 for the filing fee, $6.46 for service, and $900.00 for the cost of a functional capacity evaluation performed by Short. The administrative rule expressly allows for the recovery of the filing and service fee. No physician retained by Askvig ordered the functional capacity evaluation or reviewed the results of the functional capacity evaluation. I decline to award the cost of the functional capacity evaluation.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant temporary total disability benefits from May 25, 2017 through July 11, 2017, at the rate of nine hundred fifty-seven and 89/100 dollars ($957.89) per week.

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 Gamble v. AG Leader Tech., File No. 5054686 (App. Apr. 24, 2018).

Defendant is responsible for all causally related medical expenses, including medical mileage.

Defendant is assessed one thousand five hundred and 00/100 ($1,500.00) dollars for the cost of Dr. Kirkland's independent medical examination, one thousand eight hundred thirty-five and 00/100 dollars ($1,835.00) for the cost of Dr. Kirkland's report, one hundred and 00/100 dollars ($100.00) for the filing fee, and six and 46/100 dollars ($6.46) for the cost of service.

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

Signed and filed this 11th day of July, 2018.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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HLP/srs

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