BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
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WORKERS' COMPENSATION

HUMBERTO CONTRERAS, Claimant, vs. JOHN DEERE DAVENPORT WORKS, Employer, Self-Insured, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5054035 ARBITRATION DECISION Head Notes: 1803, 2507, 3000, 3002

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Humberto Contreras, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on May 20, 2016. Claimant alleged he sustained a work-related injury on February 19, 2015. (Original notice and petition)

For purposes of workers' compensation, John Deere Davenport Works is self-insured. Defendant filed its answer on May 26, 2016. The company denied the occurrence of the work injury. A First Report of Injury was filed on May 1, 2015.

The Second Injury Fund of Iowa filed its answer on May 31, 2016. The Fund denied claimant was entitled to benefits.

The hearing administrator scheduled the case for hearing on February 24, 2017. The hearing took place in Des Moines, Iowa at the Iowa Workforce Development Building at 150 Des Moines Street. The undersigned appointed Ms. Kristi Miller, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants elected not to call any witnesses to testify at the hearing. Joint Exhibits 1 through 6 were admitted. Claimant offered Exhibits 1 through 24. Defendant employer vigorously objected to claimant's Exhibit 8 as being untimely and highly prejudicial to defendant. The undersigned

allowed Exhibit 8 to be admitted, but defendants were allowed an additional forty-five (45) days to produce medical records to rebut the opinions expressed in Exhibit 8. John Deere offered Exhibits A through DD which were admitted. Later John Deere submitted Exhibits EE and FF. The Second Injury Fund of Iowa submitted Exhibit XX, pages 1 through 3. The entire record consisted of numerous exhibits both medical and non-medical.

On April 7, 2017, claimant filed a motion to admit another exhibit, marked Exhibit 25. Defendant filed a resistance. On April 19, 2017, the undersigned issued an order denying claimant's request to introduce additional exhibits.

Post-hearing briefs were filed on May 10, 2017. The case was deemed fully submitted on that date. The transcript of the proceedings was filed on April 12, 2017.

Subsequent to the hearing of the case, Commissioner Cortese issued a declaratory order in the PETITION BY JOHN DEERE DES MOINES WORKS, JOHN DEERE DAVENPORT WORKS, JOHN DEERE DUBUQUE WORKS, JOHN DEERE OTTUMWA WORKS, JOHN DEERE WATERLOO WORKS, AND JOHN DEERE FOUNDRY. The Declaratory Order was issued regarding Profit Sharing Bonus and Continuous Improvement Pay Plan for determining rate calculations in workers' compensation proceedings for employees who experience workplace injuries. The order was issued on July 12, 2017.

As a result of the declaratory order, the parties involved here were given an additional fourteen (14) days to recalculate the average weekly wage and the workers' compensation rate. The order to reopen the record for the very limited purpose of recalculating the rate was issued by the undersigned on October 12, 2017.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury; and

2. Claimant is single and entitled to seven exemptions;

3. The parties agree the issue of permanency is not being determined at this time, as claimant maintains he is not at maximum medical improvement (MMI), and defendants deny claimant sustained a work-related injury;

ISSUES

The issues presented are:

1. Whether claimant sustained an injury on February 19, 2015 to his bilateral arms which arose out of and in the course of his employment;

2. Whether the alleged injury is a cause of temporary disability during a period of recovery;

3. Whether claimant is entitled to a running award from April 21, 2015 through the present and continuing until such time as claimant has reached maximum medical improvement;

4. Whether defendant employer is liable for the alleged injury subject to a credit pursuant to Iowa Code section 85.38;

5. What is the average weekly wage rate and the weekly benefit rate given the declaratory order issued by Commissioner Cortese on July 12, 2017?;

6. Whether claimant tendered proper notice to defendant employer pursuant to Iowa Code section 85.23;

7. Whether claimant is entitled to the payment of medical benefits pursuant to Iowa Code section 85.27;

8. Whether claimant is entitled to the payment of an independent medical examination pursuant to Iowa Code section 85.39;

9. Whether claimant is entitled to benefits from the Second Injury Fund of Iowa;

10. Whether claimant is entitled to have certain costs paid by defendants.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, and after judging his credibility, plus after reading the evidence, reviewing several hours of video depictions of claimant at work, and after reading the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 49 years old and single. At the time of the alleged work injury, claimant had six children. He is right-hand dominant. Claimant is approximately 5 feet

and 5 inches in height. He weighs approximately 200 pounds. By National Institute of Health Standards, claimant is considered morbidly obese with a body mass index of 34.7. (Exhibit X)

Claimant resides in Moline, Illinois with his parents. He commenced his employment at John Deere Davenport Works on December 15, 2003. He has always worked as a production assembler.

LEFT KNEE CONDITION

Medical records regarding the left knee were submitted by all the parties. In Joint Exhibit 4, page 47, claimant presented to John Baker, M.D. with complaints of left knee pain. The initial appointment occurred on December 31, 2001. Dr. Baker diagnosed claimant with:

> **IMPRESSION: Possible medial meniscus tear and chondromalacia of the patella of the left knee.**

(Joint Exhibit 4, p. 47)

Claimant continued to engage in follow-up care with Dr. Baker. The physician reviewed MRI films. He found:

> There are some changes in the medial meniscus consistent with a tear, but it could also be a vascular marking. The radiologist circled the area in question, but did not call it a tear. I am not exactly sure what the significance of that is. The ACL on the MRI also was somewhat in question in terms of it's [sic] intactness, however, this is not clinically apparently torn.

(Jt. Ex. 4, p. 48)

On February 21, 2002, Dr. Baker performed a diagnostic arthroscopy of the left knee. (Jt. Ex. 4, p. 51) The surgery established there were no meniscal tears. The knee was normal. (Jt. Ex. 4, p. 52)

Post-surgery, Dr. Baker examined claimant's left knee. Claimant had already returned to work. Dr. Baker found claimant had regained full range of motion and there was no swelling in the knee. The wounds were well healed. Dr. Baker opined claimant's prognosis for a full recovery was excellent. (Jt. Ex. 4, p. 53)

On November 22, 2006, claimant visited Steven Boardman, M.D., with concerns about left knee pain after playing basketball. Dr. Boardman interpreted x-ray results as:

> **X-RAYS:** Review of his left knee x-rays including standing views demonstrate no significant lytic lesions, blastic lesions, arthrosis, loose bodies or other identifiable pathology.

(Jt. Ex. 4, p. 54)

On November 27, 2006, claimant underwent MRI testing. Jeffrey C. Goree, M.D., interpreted the results as follows:

IMPRESSION

1. Tear in the posterior horn of the medial meniscus with adjacent soft tissue edema/inflammatory change and popliteal cyst.

2. Abnormal irregular signal involving the anterior horn of the lateral meniscus.

3. Small knee effusion.

4. Thickened medial patellar retinaculum.

(Jt. Ex. 4, p. 55)

Claimant returned to Dr. Boardman on December 6, 2006. The diagnosis was "Left knee mechanical pain secondary to medial meniscus tear." (Jt. Ex. 4, p. 56) Dr. Boardman performed arthroscopic surgery on December 27, 2006. The orthopedic surgeon removed a loose body and resectioned the medial and lateral plica. (Jt. Ex. 4, p. 58) Claimant returned to work in February of 2007. (Jt. Ex. 4, p. 61) Dr. Boardman advised claimant to ride a recumbent bicycle and to perform leg lift exercises. Claimant was advised to follow up with treatment on an as-needed basis. (Jt. Ex. 4, p. 61)

Subsequent to his surgery in 2006, claimant has had injections to the left knee for osteoarthritis. (Jt. Ex. 4, pp. 62-74) On May 20, 2010, Dr. Boardman diagnosed claimant with "**Left knee synovitis with flare up of pain, swelling and tightness.**" (Jt. Ex. 4, p. 64) The physician recommended a series of Synvisc injections into the left knee. (Jt. Ex. 4, p. 64)

On April 9, 2011, claimant underwent MRI testing. Timothy J. Humes, M.D. interpreted the results as:

> IMPRESSION: Subtle tears of the posterior horn of the medial meniscus and the anterior horn of the lateral meniscus. Associated moderate sized joint effusion. Underlying mild osteoarthritic change, most prominent at the patellofemoral joint. Underlying geode formation in the posteromedial tibial plateau, with mild edema.

(Jt. Ex. 4, p. 69)

After having received the results of the MRI, Dr. Boardman diagnosed claimant with **"Left knee mild osteoarthritis with subchondral geode formation, posterior medial tibial plateau."** (Jt. Ex. 4, p. 70) Dr. Boardman opined additional arthroscopic surgery would not benefit claimant's symptoms.

On May 30, 2013, claimant returned to Dr. Boardman for a consultation regarding the left knee. (Jt. Ex. 4, p. 71) Dr. Boardman expressed his impressions in his office notes for the same date. Dr. Boardman wrote:

> **IMPRESSION: Synovitic flare up left knee pain and swelling, with preexisting osteoarthritis; temporarily improved with Depo-Medrol injection.**

(Jt. Ex. 4, p. 71)

Claimant returned to Dr. Boardman on November 11, 2013. Once again, claimant had a synovitic flare of left knee pain. (Jt. Ex. 4, p. 72) Dr. Boardman recounted that x-rays taken earlier in the calendar year demonstrated claimant had mild bilateral knee osteoarthritis. (Jt. Ex. 4, p. 72) Dr. Boardman injected Synvisc into claimant's left knee because of mild osteoarthritis. (Jt. Ex. 4, p. 72)

On June 5, 2014, claimant returned to see Dr. Boardman. (Jt. Ex. 4, p. 74) Claimant had another symptomatic flare-up of the left knee due to mild osteoarthritis. (Jt. Ex. 4, p. 74) Dr. Boardman injected claimant's left knee with Synvisc-One. Claimant tolerated the procedure well. (Jt. Ex. 4, p. 74)

Dr. Boardman has not assigned any permanent work restrictions for claimant's left knee. Claimant testified he has never been under permanent work restrictions for the left knee. At the time of the alleged work injury on February 19, 2015, claimant was a full time employee at John Deere and working without any accommodations. He even had to stand for part of his shift.

PRIOR BILATERAL UPPER EXTREMITY CONDITIONS

Prior to the date of the alleged workers' compensation injury, claimant reported to the plant medical staff about bilateral elbow and left wrist discomfort. Records for John Deere established that as early as March 16, 2010, claimant complained of "bilateral lateral elbow pain with gripping and exertion, and left thumb base and wrist pain with gripping x 3-4 wks." (Ex. B, p. 27) Claimant reported he was required to lift a heavy torque gun crossbody from his left to his right to holster it. (Ex. B, p. 27)

Claimant returned to the medical clinic on July 10, 2010 with complaints of intermittent hand parasthesias. (Ex. B, p. 27) Claimant reported he had been treating with his personal medical doctor. The hand problems had existed for nearly one year. Claimant indicated he had been treated with exercises, braces and medications. (Ex. B, p. 27) The plant physician at the time, Jack Luke, M.D., reported claimant had a history "of cervical and thoracic strain, lateral epicondylitis, now with complaints of intermittent carpal tunnel or higher nerve root compression." (Ex. B, p. 27)

On August 3, 2010, claimant presented to Quad City Family Physicians, P.C. (Ex. D, p. 39) Claimant reported no history of injury. (Ex. D, p. 39) It was documented claimant had gained weight recently. (Ex. D, pp. 39-40)

On October 15, 2010, claimant treated with Emmanuel ZZNwumeh, M.D. for complaints in the left wrist of two days' duration. (Ex. C, p. 35) The physician indicated claimant had a history of:

> The musculoskeletal symptoms are associated with pain, stiffness and swelling. The patient denies associated crepitation, instability, "snapping", "popping." Pt has chronic arthritis in multiple joints and Carpal tunnel sundrome [sic] in the Lt wrist.

(Ex. C, p. 35) The physician diagnosed claimant with carpal tunnel of the left wrist and pain in the left knee joint. (Ex. C, p. 36)

On November 8, 2010, claimant presented to Medical Arts Associates, Ltd., in Rock Island, Illinois. Miguel A. Sanguino, M.D., opined claimant had a possible carpal tunnel/cubital tunnel syndrome. (Ex. E, p. 43) Claimant reported to the physician, the symptoms commenced in April of 2010. (Ex. E, p. 43) Dr. Sanguino wanted to perform some testing but claimant did not participate in such. He discontinued his medical treatment.

On January 10, 2014, claimant reported to Occupational Health Services with complaints of pain in the left wrist. (Ex. G, p. 47) Claimant was pushing on something. (The copy of the report was very difficult to read.)

ALLEGED BILATERAL UPPER EXTREMITY INJURIES ON FEBRUARY 19, 2015

On February 19, 2015, claimant presented to the in-house medical clinic at John Deere. He complained of bilateral forearm tendinitis. There was discomfort in the left forearm but no numbness and tingling. Claimant reported taking 500 mg of Naproxen for a personal medical issue. Claimant attributed his pain to pulling and attaching hoses with his left upper extremity. (Jt. Ex. 1, p. 12)

On February 20, 2015, Lester Kelty, M.D., examined claimant at the plant medical clinic. Dr. Kelty planned to visit claimant's job site. (Jt. Ex. 1, p. 12) On February 26, 2015, claimant returned to the clinic. The nurse practitioner, Mary Huesmann, NP, noted claimant's left forearm was still tender but overall, he was "feeling better." (Jt. Ex. 1, p. 11) On March 5, 2015, claimant reported to the nurse practitioner how much worse the left forearm was than during the prior week. (Jt. Ex. 1, p. 11) Claimant reported throbbing but no numbness and tingling. (Jt. Ex. 1, p. 11)

Dr. Kelty examined claimant on March 11, 2015 for left elbow pain. Claimant attributed his pain to pulling and attaching hoses. (Jt. Ex. 1, p. 10) Dr. Kelty ordered physical therapy. (Jt. Ex. 1, p. 11)

On March 13, 2015, claimant went to physical therapy at the plant clinic. Beth Bryant, DPT, found claimant's left elbow was tender over the mobile wad. The right elbow was most tender at the joint line and over the annular ligament. The wrist extension was approximately 60 degrees bilaterally. (Jt. Ex. 1, p. 9) Claimant

continued to receive physical therapy. He also saw Dr. Kelty. The physician observed claimant's work station.

On April 20, 2015, claimant was hand-delivered a denial of workers' compensation benefits from Mr. Michael Perry, Health and Safety Manager for John Deere Davenport Works. The bases for the denial are detailed in the following two paragraphs:

> John Deere Davenport Works has now investigated and evaluated your claim of bilateral arm/forearm pain from pulling and attaching hoses. After speaking with you, reviewing your medical records, performing a jobsite visit and review of your job and discussing your alleged injury and job with John Deere Medical Department personnel, including Dr. Lester Kelty, your claim and request for worker's [sic] compensation benefits for your bilateral arm/forearm pain are respectfully denied.
>
> Dr. Kelty performed a jobsite visit and review of your job on March 20, 2015. Dr. Kelty indicated the job does not involve a great deal of force or repetition or force and posture. Dr. Kelty has concluded that it is unlikely that the job caused your bilateral arm/forearm pain.

(Defendant's Exhibit J)

That was the last day claimant worked at any John Deere facility. Since that date, claimant has been receiving either weekly indemnity benefits or long term disability benefits pursuant to the collective bargaining agreement in effect at John Deere.

During the arbitration hearing, claimant testified he knew he was being videotaped by a sub-contractor while he was performing all aspects of his job. The undersigned has a good understanding of the activities claimant had to perform at station 50 in Department 747. This deputy watched approximately two hours of video tapes. Claimant worked in tandem with another assembler. She worked on one side of the construction equipment and claimant worked on the other side. It is true the assemblers did not repeat the same task over and over again. However, they did use their hands to perform their job tasks. Primarily, claimant used his right hand and arm to manipulate tools and hoses. He used the left hand and arm to hold hoses or to keep an object in place. Occasionally, claimant used both hands to hammer with a mallet. It was easy to see claimant's right hand was the dominant one. Claimant did not just stand or sit in one spot. He moved from the construction equipment to the utility shelves. He had to mop and sweep the floors. There were times when he sat on a small stool or climbed up a short step ladder. He appeared to have no impaired mobility when walking or climbing. (Exhibit 6)

During his hearing, claimant admitted his bilateral arm symptoms have not improved. He also acknowledged the symptoms on the left arm have always been

worse than the symptoms on the right arm, even though the right hand is claimant's dominant hand.

A deposition of Dr. Kelty was taken on February 8, 2017. In the deposition, Dr. Kelty testified why he did not relate claimant's bilateral arm/forearm problems to his work. Dr. Kelty testified in relevant portion:

> Q. Okay. Now, after you looked at - - after you examined Mr. Contreras on those occasions we already discussed, after you looked at - - reviewed his job out at John Deere Davenport Works, did you come to any kind of opinion regarding whether his alleged bilateral arms injury was work related?
>
> A. Yes. I didn't think that the job was causing any - - any injury, because it was not particularly repetitive or forceful, there were no unusual postures.
>
> Q. Okay. You said the job - - from your review of the job, it was not repetitive?
>
> A. Correct.
>
> Q. All right. You said there was something about force. What was that?
>
> A. Wasn't - - Didn't require a great deal of force.
>
> Q. Okay. And what about the different postures or positioning of the employee in that job, what'd you find?
>
> A. Well, the employee was seated and all the work was directly in front of him, so there was no reaching around or some unusual posture.
>
> Q. You didn't see any of that?
>
> A. None.
>
> Q. Okay. What about the use of any vibratory tools? Were there any vibratory tools used on the job?
>
> A. Well, not in the routing of the hoses. When they connect the - - the main frame to the engine frame, they do have to use some vibratory tools.
>
> Q. Okay. Do you know what those are?
>
> A. Probably they're nut drivers.
>
> Q. Okay. Do you think that - - In your opinion, did that contribute at all to Mr. Contreras' alleged bilateral arms injury?
>
> A. No, I don't think so.

Q. Mr. Contreras is claiming injuries bilaterally, on each of his arms. The fact that he's claiming them bilaterally, does that tell you anything regarding causation?

A. Well, yes, because if you have a bilateral injury we have to assume that the same sort of mechanism was causing the injury on both arms, and you don't do the same thing with both arms.

Q. All right. If someone's claiming a bilateral injury to both extremities, would that make it less likely to be work related?

A. Absolutely.

Q. Is that because a person - - whether they're right-hand dominant or left-hand dominant - - is more likely to use their dominant hand, dominant arm, predominantly on the job?

A. Yeah. Yes.

Q. All right. Did Mr. Contreras have any kind of medical history that you believe was relevant to the issue of what caused his bilateral arms injuries?

A. He did have a history of osteoarthritis - -

Q. Okay.

A. - - of his knees.

Q. Okay. What is osteoarthritis?

A. Well, it's probably a degenerative disease of the joints.

Q. All right. And if he had osteoarthritis in his bilateral arms, bilateral hands, is that the sort of thing that could have caused the symptoms that he reported to you?

A. It could cause pain, yes.

Q. All right. Did he report pain to you on the occasions you saw him?

A. Pain - - Pain was his major complaint.

Q. I want you to assume, Doctor, that Mr. Contreras stopped working out at John Deere Davenport Works on April 20th, 2015, okay?

A. Yes.

Q. And I want you to assume he continued to have symptoms, okay?

A. Yes.

Q. Assuming those two things. Are those - - Would those facts be- - would these be factors - - facts that would enlighten you as far as the cause of his alleged injuries?

A. If he was not doing his - - the job, you would expect him to improve.

Q. That's if the job actually caused the injuries?

A. If the job was the causative factor, yes.

Q. So if the job, his work out at John Deere Davenport Works was, in fact, the cause of his bilateral arms injuries, you would expect, then, when Mr. Contreras stopped doing that job and stopped working, for his symptoms to at least improve?

A. Yes.

(Ex. AA, pp. 161-162)

Because the claim was denied by John Deere, claimant sought medical treatment on his own. Jason Davis, D.O., at Quad City Family Physicians, examined claimant on April 21, 2015. Dr. Davis diagnosed claimant with tendinopathy of the bilateral forearms. The family physician referred claimant to ORA for additional treatment. (Jt. Ex. 2, pp. 14-15)

Dr. Davis also ordered EMG/NCV studies. (Ex. M) The tests were conducted by John M. Wright, M.D. at Neurology Consultants, PC. Dr. Wright interpreted the results as:

Impression

Normal EMG/NCS of the upper extremities without evidence of neuropathy or radiculopathy.

(Ex. M, pp. 104-105)

On May 6, 2015, Dr. Boardman examined claimant for bilateral elbow pain. (Jt. Ex. 3, p. 17) The orthopedic surgeon diagnosed claimant with:

IMPRESSION: Bilateral lateral elbow epicondylitis; has had time, physical therapy, tennis elbow strap, and ultrasound.

(Jt. Ex. 3, p. 18) Dr. Boardman injected the left elbow with Depo-Medrol. (Jt. Ex. 3, p. 18)

Claimant's treatment was transferred to Thomas L. VonGillern, M.D. Claimant related he experienced bilateral elbow pain on February 19, 2015 after twisting, pulling and hooking up hydraulic hoses at work. (Jt. Ex. 3, p. 21) Dr. VonGillern initially examined claimant on June 9, 2015. (Jt. Ex. 3, p. 21) X-rays of the bilateral elbows were ordered. The results showed "minimal degenerative changes." (Jt. Ex. 3, p. 22)

After examining both upper extremities, Dr. VonGillern diagnosed claimant with:

IMPRESSION:

1. **Bilateral elbow lateral epicondylitis**
2. **Bilateral elbow mild osteoarthritis**
3. **Right index and long mallet fingers**
4. **Left long mallet finger**

(Jt. Ex. 3, p. 22) Dr. VonGillern prescribed bilateral long WFO velcro splint, and Voltaren Topical Gel 1%. (Jt. Ex. 3, p. 22)

On June 15, 2015, counsel for claimant scheduled an independent medical examination for claimant with Mark C. Taylor, M.D., MPH. Claimant explained his job as a production assembler to Dr. Taylor. However, the independent medical examiner did not have the benefit of the videos which showed claimant performing his various job tasks. Claimant reported pain over the medial aspects of both elbows, occasional mild wrist pain on both sides with the right side more symptomatic than the left, numbness and tingling in the right hand that followed a median distribution while the left side followed an ulnar distribution. (Ex. 6, p. 20)

Dr. Taylor conducted a physical examination. He noted there was pain over the elbows with forearm supination and pronation, and to some extent with wrist flexion and extension. (Ex. 6, p. 21) Dr. Taylor provided the following diagnoses for claimant:

Diagnoses

1. Bilateral elbow epicondylitis, medial and lateral.
2. Bilateral upper extremity paresthesias.
3. History of bilateral knee pain and previous history of two left knee arthroscopic procedures.

(Ex. 6, p. 22)

With respect to the cause for claimant's upper extremity symptoms, Dr. Taylor opined:

Causation

All opinions are expressed within a reasonable degree of medical certainty.

Mr. Contreras started to develop upper extremity symptoms that were mild in nature prior to his reported date of injury. As noted previously, there were changes made in the units that he was working on that made his job more difficult and more awkward. Additionally, starting in approximately November 2014, he was working overtime performing these tasks. Furthermore, there was a substantial change in the percentage of units that required these difficult hoses. He went from 38% of the units up to 80% of the units that were all-wheel drive and required these difficult hose placement tasks.

In general, cubital tunnel syndrome is more common in men than women and carpal tunnel syndrome is more common in women than men. He denies any history of diabetes or thyroid problems. Occupational risk factors would include tasks requiring repeated elbow flexion and extension, as well as holding tools and arms in constant position. He also used pneumatic tools.

His job required awkward positioning of the wrists, elbows, and arms in order to reach into the area that he needed in order to couple the hoses. He then had to twist them into place. He had multiple other tasks placing other devices and included lifting the pins that weighed 35 pounds and the steering cylinders that weighed 55 to 60 pounds. Therefore, Mr. Contreras had multiple potential exposures that could lead to elbow tendinitis/epicondylitis and/or compression neuropathies.

What stands out in this particular circumstance is that Mr. Contreras was asymptomatic for multiple years while performing his job where 38% of the units were all-wheel drive and they had not yet undergone the re-design that led to less "assembler-friendly" work tasks. The switch occurred at some point in 2014 (meaning the re-design) and they also switched from 38% all-wheel drive to 80% all-wheel drive. Starting in November 2014, he also started working to consistently work overtime.

In light of his job tasks and job demands, including the awkward postures and positioning of his wrists and elbows, as well as the use of pneumatic tools and various types of twisting motions with supination and pronation of the forearms, and coupled with his increased hours and the timing of his development of the symptoms, it is my opinion that his job tasks more likely than not represented a significant contributing factor to his development of these conditions.

(Ex. 6, p. 23)

The second appointment with Dr. VonGillern occurred on July 9, 2015. (Jt. Ex. 3, p. 23) Claimant reported the occurrence of numbness during the night when his elbows were flexed. (Jt. Ex. 3, p. 23) Dr. VonGillern found a positive Tinel's when tapping over the median nerve at the bilateral wrists as well as a positive Tinel's when tapping over the ulnar nerve of the bilateral elbows. There was a negative Phalen's test. (Jt. Ex. 3, p. 23) Dr. VonGillern changed his diagnoses to:

IMPRESSION:

1. **Bilateral elbow lateral epicondylitis.**
2. **Bilateral elbow mild osteoarthritis.**
3. **Possible bilateral carpal tunnel syndrome.**
4. **Possible bilateral cubital tunnel syndrome.**

(Jt. Ex. 3, p. 23)

On August 18, 2015, Dr. VonGillern recommended a second EMG test. The testing occurred on September 3, 2015. (Ex. P, pp, 112-113) Brian J. Anseeuw, M.D., interpreted the results. The study was normal. There was no electrophysiological evidence of compressive neuropathy or radiculopathy of the upper limbs. (Ex. P, p. 113)

By October 15, 2015, Dr. VonGillern had concluded claimant had "Clinical left carpal and cubital tunnel syndrome." (Jt. Ex. 3, p. 26) On December 15, 2015, claimant reported his condition was unchanged. (Jt. Ex. 23, p. 29) Dr. VonGillern injected the left elbow lateral epicondyle and the medial epicondyle. Claimant tolerated the procedure well with no complaints. (Jt. Ex. 3, p. 29) On January 26, 2016, claimant reported at his examination he was experiencing left elbow pain after using his snow blower at home. Physical therapy and Voltaren Topical Gel were prescribed. (Jt. Ex. 3, p. 30) Dr. VonGillern administered another injection into claimant's left elbow on March 9, 2016.

On April 20, 2016, Dr. VonGillern performed the following surgical procedures:

1. Left ulnar nerve neurolysis at the elbow with anterior transposition submuscular.
2. Left median nerve lysis.

(Jt. Ex. 3, p. 35) Claimant tolerated the procedures well. He returned to the recovery room in satisfactory condition. (Jt. Ex. 3, p. 36)

Christine Deignan, M.D., is the Workers' Compensation Medical Director for John Deere. She physically examined claimant on April 26, 2016. The examination occurred just six days after Dr. VonGillern performed left arm surgery on claimant.

Later Dr. Deignan authored a report on May 10, 2016. In the report Dr. Deignan expressed her opinions regarding the cause of claimant's bilateral upper extremity conditions. (Ex. X) Dr. Deignan reviewed the videos of claimant performing his work duties at John Deere. She diagnosed claimant with the subsequent conditions:

Diagnosis:

Bilateral symptoms of carpal tunnel syndrome by history

Bilateral symptoms of cubital tunnel syndrome by history

History of bilateral lateral epicondylitis

History of bilateral medial epicondylitis

Osteoarthritis with bilateral hand pain, bilateral wrist pain, bilateral elbow pain,

bilateral knee pain, bilateral ankle pain, and bilateral foot pain

History of Neck and Low back pain

Left renal calculus

Hypertension

Obesity

(Ex. X, p. 148)

Dr. Deignan opined why she did not relate claimant's bilateral upper extremity conditions to his work duties at John Deere. The physician wrote:

> The current understanding of causation of carpal tunnel syndrome is undergoing a paradigm shift. Dr. Ring presented results of a meta-analysis in 2007 at the American Academy of Orthopedics. His report is referenced in the AMA Guides to the Evaluation of Disease Injury and Causation, second edition. Dr. Ring stated that biological factors such as genetics, age and systemic imbalance are considered to play a stronger role in the causation of than [sic] occupational factors.
>
> There is evidence to support that a combination of risk factors such as force, repetition, and posture *together* may be causally associated with carpal tunnel syndrome. However, epidemiological studies define high repetition as performing the same task every 30 seconds or spending 50%

of the cycle time performing the same activity. High force is defined as requiring average hand forces of more than 4 kg (8.8 pounds). Awkward wrist posture is defined as more than 45 degrees of wrist flexion or extension. Multiple risk factors must be present in the job to support an argument of positive causation.

A 2007 meta-analysis presented by Dr. Ring at the American Academy of Orthopedic Surgeons (a study which uses data from multiple individual studies to summarize the findings) reviewed 117 studies on CTS based on the Hill criteria of causation (a group of conditions necessary to provide evidence of a causal relationship) and found that the average strength of causal association was about 3 times stronger for biological factors (genetics, race & age) compared to occupational factors (job type, repetitive hand use and vibration). Furthermore, "the quality and strength of evidence supporting genetic or inherent risk factors was felt to be moderate while the quality and strength of evidence of supporting occupational risk factors was felt to be poor" [.] In summary, based on recent literature there is no strong evidence to indicate that repetitive work as typically performed by an assembler can cause carpal tunnel syndrome.

Mr. Contreras has bilateral upper extremity pain. To claim that he has carpal tunnel syndrome as a result of work activities, each upper extremity needs to be analyzed independently. Mr. Contreras is right hand dominant. In his history to me, he reported that the left arm has always been more painful that [sic] the right arm. The medical records are consistent with this complaint. Mr. Contreras's treating physician has performed surgery on the left upper extremity.

In fact, the recent literature suggests that there may be a relation to biophysical factors which include age and increased BMI. Mr. Contreras is 47 years old. Previous studies indicate that the risk of CTS occurrence increases with age. Especially, age greater than 40 years is significantly associated with increased incidence of CTS. Another important independent risk factor for CTS has been found to be Body Mass Index (BMI). Studies have consistently show that there is strong evidence to indicate that increased BMI is associated with increased risk of developing CTS. In fact, in one study a BMI > 30 was noted to increase the Odds ratio (The odds of developing the disease when compared to another person with normal BMI) by up to 4.4 times. Mr. Contreras" BMI is 34.7 at the time of the examination. BMI of 35 is considered obese.

Therefore, based on the above literature one would conclude that Mr. Contreras [sic] older age and increased BMI has a stronger evidence of contribution to the development of bilateral CTS than his occupational

exposure. We can follow Mr. Contreras [sic] increase from a BMI of 29.3 in 2006 to current BMI 34.6. (BMI 25 is considered normal weight).

When an individual develops carpal tunnel syndrome it becomes likely that the condition is due to a personal condition rather than a work exposure.

Causation for each hand must be considered independently. There are very few jobs that require repetitive motion of both hands.

The videos of Mr. Contreras working show that his left hand and arm are not used in a repetitive fashion. The left upper extremity is used with a frequency of rare according to the Department of Labor classifications. Video 6 at the marker 14:30 illustrates hose assembly on the all will [sic] drive the. [sic]

When considering a repetitive motion injury, one must be aware that a highly repetitive task is defined as performing essentially the same function every 30 seconds or performing essentially the same task for more than 50% of the work day.

AMA Guides to the Evaluation of Disease and Injury Causation, second edition, page 308 lists occupational risk factors for ulnar nerve entrapment at the elbow. The strongest evidence is for age. There [is] insufficient evidence for occupational risk factors. There is some evidence for a combination of forces repetition and posture. The conclusion of the editors, on page 311, is that there are no credible studies to implicate occupational factors in cubital tunnel.

The left arm is most painful and Mr. Contreras is right handed. In the job videos the left hand is used rarely and mostly used for guidance and steadying and not for gripping or tool use. On only one of the assembly videos does the left hand hold a vibratory tool? [sic] When the left hand holds the tool the actuation time of the tool is only 2 seconds. The left hand is used to hold wrenches briefly.

Mr. Contreras stated that he was working up to 10 hour days and making 8-10 machines per day during the time during 3 months before he reported his injury. This ratio is approximately an hour per machine. The videos of his work also confirmed that cycle times are near an [sic] one hour. [sic] Tape 6 depicts assembly at station 50; no activities are performed repetitively. Hand positions change frequently. Awkward positions are not sustained, no intense vibratory tools are used. Firm grasping is brief and rare.

> Based on my interview and examination of Mr. Contreras and my the [sic] review of the videos of Mr. Contreras performing assembly duties at John Deere Davenport Works, it is my medical opinion that he is not exposed to occupational factors sufficient to cause his upper extremity condition, diagnosed by his treating physician as clinical carpal tunnel syndrome and clinical cubital tunnel syndrome.
>
> In my medical opinion, it is much more likely that [he] has non-specific arm pain due to personal medical factors. Mr. Contreras developed the bilateral upper extremity complaints in 2010 and sought medical care with Dr. Sanguino. Dr. Sanguino recommended diagnostic testing but Mr. Contreras did not follow-up for diagnosis or treatment. Mr. Contreras did not report his condition as work related until 2015.

(Ex. X, pp. 150-153)

Claimant improved post-surgery. However, in the summer of 2016, claimant was playing football. He caught the ball. After the football episode, claimant developed left wrist and left thumb pain. (Jt. Ex. 3, p. 39) He presented to Dr. VonGillern on August 22, 2016. The surgeon suspicioned claimant had:

> **IMPRESSION:**
>
> 1. **Status post left elbow ulnar neurolysis at elbow with submuscular anterior transposition and left median nerve lysis that was done on 4/20/16**
>
> 2. **Left wrist pain**
>
> 3. **Possible left wrist TFCC tear**
>
> 4. **Possible left wrist scapholunate ligament tear**

(Jt. Ex. 3, p. 39) A TFCC tear stands for a triangular fibrocartilage complex tear. Dr. VonGillern ordered a left wrist MRI arthrogram. (Jt. Ex. 3, p. 39)

The left wrist arthrogram occurred on August 31, 2016. Pranav P. Patel, M.D., interpreted the results as:

> 1. Focal tear on the radial sided TFCC as described.
>
> 2. There is some regional marrow edema in the proximal ulnar corner of the lunate that could represent stress reaction. Recommend continued surveillance to exclude developing osteonecrosis.

(Jt. Ex. 3, p. 42)

Dr. VonGillern agreed with Dr. Patel's interpretation of the left wrist arthrogram. (Jt. Ex. 3, p. 43) On September 15, 2016, Dr. VonGillern diagnosed claimant with the following conditions:

IMPRESSION:

1. Status post left elbow ulnar neurolysis at elbow with submuscular anterior transposition and left median nerve lysis that was done on 4/20/16

2. Left wrist TFCC tear

3. Left wrist osteoarthritis

4. Left slight ulnar plus wrist

(Jt. Ex. 3, p. 43) Dr. VonGillern considered claimant's condition to be stable. (Jt. Ex. 3, p. 44)

Claimant returned to Dr. VonGillern on December 6, 2016. A left wrist injection was administered. (Jt. Ex. 3, p. 45) On February 6, 2017, Dr. VonGillern opined claimant was able to return to work with restrictions. Claimant was restricted from using the left upper extremity. Left upper extremity surgery was scheduled for February 17, 2017. (Ex. 14, p. 45)

Counsel for claimant sought another independent medical examination for claimant in January of 2017. (Ex. 3, p. 6) Robert W. Milas, M.D., a neurological surgeon with his practice in Rock Island, Illinois, examined claimant on January 5, 2017. On the date of the examination, Dr. Milas did not hold an active Iowa license to practice medicine. It had expired on December 1, 2016. However, he was able to practice within the State of Illinois. Dr. Milas conducted a physical examination of claimant's bilateral arms. The independent medical examiner did not rely upon the videos depicting claimant's job duties when the physician rendered his various opinions. He was informed by claimant's counsel, the bilateral arm problems were related to claimant's employment at John Deere. Dr. Milas opined he found no evidence of any pre-existing conditions which would contribute to claimant's problems. (That was a misunderstanding on the part of the physician.) Dr. Milas related the TFCC tear to claimant's other bilateral conditions. Dr. Milas rated claimant as having a 48 percent permanent impairment to the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Ed.

Also on February 6, 2017, Dr. VonGillern signed a check the box opinion letter drafted by claimant's counsel. Dr. VonGillern marked an "X" next to the following opinion:

> It is my opinion, stated within a reasonable degree of medical probability (i.e. more likely than not), that Humberto substantially

> aggravated, exacerbated, "lit up," or worsened preexisting conditions with his work activities at John Deere that led to the left wrist TFCC tear.

(Ex. 8, p. 29)

However, Dr. VonGillern changed his opinion in a summary opinion letter on April 3, 2017. (Ex. FF) Dr. VonGillern agreed to the following statements:

> On February 6, 2017, you signed the following check the box opinion drafted by Mr. Contreras' attorney:
>
> > It is my opinion, stated within a reasonable degree of medical probability (i.e. more likely than not), that Humberto substantially aggravated, exacerbated, "lit up," or worsened preexisting conditions with his work activities at John Deere that led to the left wrist TFCC tear.
>
> You are only now informed that at the time Mr. Contreras' TFCC tear was diagnosed on August 31, 2016 (through the MRI arthrogram left wrist), Mr. Contreras had not physically worked at John Deere Davenport Works since April 20, 2015. You are only now informed that Mr. Contreras was completely off work from April 21, 2015 until August 31, 2016 when he was first diagnosed with the TFCC tear. You were not aware that Mr. Contreras had been completely off work since April 20, 2015 when you signed the check the box opinion regarding the TFCC tear drafted by Mr. Contreras' attorney on February 6, 2017.
>
> Had you been aware that Mr. Contreras had been completely off work since April 20, 2015, you would not have signed the aforementioned check the box opinion drafted by Mr. Contreras' attorney regarding the TFCC tear. Now that you are informed and are aware that Mr. Contreras was completely off work from April 21, 2015 until August 31, 2016 (when he was first diagnosed with the TFCC tear), it is your opinion within a reasonable degree of medical certainty that Mr. Contreras' left wrist TFCC tear was neither caused nor aggravated by his work at John Deere Davenport Works.
>
> I, Dr. Thomas VonGillern, agree that the above paragraphs are an accurate summary of the conversation that I had with attorney Troy A. Howell on April 3, 2017.

(Ex. FF, pp. 1-2)

Because claimant's Exhibit 8 was not served upon the attorney for John Deere until three days prior to the date of the hearing, defendant was allowed to submit a supplemental report from Dr. Deignan. She concluded the following with respect to claimant's left TFCC tear:

CONCLUSION:

Since the symptoms and signs of left TFCC tear appeared after a home incident when Mr. Contreras had not worked at John Deere Davenport Works for 16 months, I do not find a relationship between his work activities and his left wrist TFCC tear.

After review of all the documents it is my medical opinion, within a reasonable degree of medical certainty, that Mr. Humberto Contreras's condition of left wrist TFCC tear is not caused or aggravated by work activities performed for John Deere Davenport Works.

(Ex. EE, p. 3)

RATIONALE AND CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

It is the determination of the undersigned deputy workers' compensation commissioner; claimant has failed to prove his bilateral upper extremity conditions arose out of and in the course of his employment. There is no causal connection between claimant's bilateral upper extremity conditions and his employment at John Deere Davenport Works.

This deputy reviewed the videos of claimant performing the motor grader assembly job. Dr. Deignan defined repetitive work as: "The same function every 30 seconds or performing essentially the same task for more than 50% of the work day." (Ex. X, p. 152)

After reviewing the various videotapes included in the exhibits, the undersigned concludes claimant did not engage in repetitive work by definition. Claimant, at all times, maintained his bilateral arm conditions were caused by "marrying" hoses on the newly designed Tier 4 all-wheel drive grader. The new model appeared on the assembly line in 2014. Claimant did not just connect hoses. He performed a variety of tasks on the assembly line. Claimant only had to connect four of the eight hoses on the newly designed Tier 4 all-wheel drive grader model. His partner connected the other four hoses. Additionally, out of the eight to ten graders assembled during a shift, not every grader was a Tier 4 all-wheel drive grader model. There were three different kinds of two-wheel drive model graders on the same assembly line. Claimant testified he did not experience problems working on those graders. Claimant had other duties as well, such as cleaning responsibilities, and securing parts for his unit. He was not connecting hoses for 50 percent of his day or once every 30 seconds.

Claimant testified he did not have difficulties assembling hoses prior to the introduction of the Tier 4 all-wheel drive grader. However, that testimony is not exactly accurate. Claimant had pre-existing bilateral epicondylitis and left wrist and thumb pain dating back to March 2010. Claimant sought treatment, but he did not follow up with recommended testing to obtain a definitive diagnosis. He voluntarily discontinued treatment.

Claimant also sought treatment at the John Deere Occupational Clinic in January 2014. He reported left wrist pain after pushing down on something. The incident occurred approximately one month prior to the date of the alleged work injury.

Next, there is the issue of the non-dominant upper extremity. Claimant consistently reported to his medical providers the left (non-dominant) upper extremity was worse than the right (dominant) upper extremity. If the motor grader assembly job was the operative cause of claimant's symptoms, it stands to reason, the dominant right upper extremity would be used considerably more than the non-dominant left upper extremity. The videos demonstrated claimant relied much more heavily on his dominant right upper extremity than he did on his left upper extremity. Nevertheless, the left upper extremity was in worse condition than the right upper extremity.

Claimant has not worked at any John Deere facility since April 20, 2015. Nevertheless, his bilateral upper extremity condition has not improved. If claimant's condition had been caused by connecting hoses on the Tier 4 all-wheel drive grader, there should have been some improvement in his condition once he was removed from the workplace. Such has not been the case. Claimant maintains he has not reached maximum medical improvement. He does not believe he is ready to return to work.

Then there are the various medical opinions regarding causation. Dr. Kelty examined claimant on four occasions. He also visited and reviewed claimant's work station to see if there were any job activities which would lead to bilateral upper extremity injuries. (Ex. AA, p. 161) Dr. Kelty opined the motor grader assembly job was not repetitive, was not forceful, there were no awkward postures, and claimant only employed the use of vibratory tools for brief periods. Dr. Kelty also opined bilateral injuries were less likely to be work-related because a worker was more likely to use the dominant hand or arm on the job. (Ex. AA, p. 162) Great deference is given to the opinions of Dr. Kelty because he had the advantage of actually observing the work station. He watched the assembly workers performing their job duties. Dr. Kelty observed the workers rotating job duties. Dr. Kelty opined he would have expected claimant's conditions to have improved after claimant stopped working in the plant if in fact, the bilateral upper extremity conditions were work-related.

The opinions of Dr. Deignan are also highly regarded. She reviewed all of the videos taken of claimant while he was performing his various job duties. She also examined claimant, reviewed medical records and researched medical journals. She stressed the view many physicians now hold; carpal tunnel syndrome is related to increased age and increased BMI. She opined carpal tunnel syndrome is likely due to a personal condition rather than a work exposure. Dr. Deignan opined claimant was not exposed to occupational factors sufficient to cause upper extremity conditions. She recognized claimant had pre-existing upper extremity complaints.

Dr. Deignan also opined claimant's left wrist TFCC tear was not caused or aggravated by work activities. The signs and symptoms did not appear until August 22,

2016. Claimant admitted to Dr. VonGillern that he noticed the symptoms after catching a football. Additionally, claimant had been off work since April 20, 2015. He had been away from the work environment for 16 months.

Then there are the contradictory opinions of Dr. VonGillern. Initially, he supported a nexus between claimant's employment at John Deere and the symptoms claimant voiced to him. However, he changed his opinions on causation after he reviewed the motor grade assembly job videos. Dr. VonGillern subsequently opined claimant's job was not repetitive in nature; the job did not require claimant to engage in awkward postures and there was not a frequent use of vibratory tools. Dr. VonGillern also noted claimant's symptoms did not improve after he left work on April 20, 2015. Dr. VonGillern did not relate the TFCC tear to claimant's employment, once the surgeon learned claimant had not worked since April 20, 2015.

The opinions of Dr. Taylor and Dr. Milas are accorded less weight than the opinions of the other three physicians, especially Dr. Kelty and Dr. Deignan. Dr. Taylor and Dr. Milas did not have the benefit of an on-site visit to John Deere. Their opinions would have carried more weight if they had reviewed the videos taken of claimant performing his job tasks. As mentioned earlier in the decision, Joint Exhibit 6 was a very compelling exhibit. Dr. Taylor and Dr. Milas would have had a better understanding of claimant's job duties if they had reviewed the videos. There is no indication Dr. Taylor was ever provided with a copy of the job videos. There is documentation to establish a copy of the videos was sent to Dr. Milas on January 4, 2017. (Ex. 3, p.6) However, Dr. Milas, in his report of January 5, 2017, fails to mention he reviewed any videos before rendering his independent medical report. (Ex. 4, p. 9) As a consequence, Dr. Taylor and Dr. Milas lacked the "first-hand knowledge" the other three physicians possessed when they rendered their causation opinions.

Therefore, the greater weight of the evidence establishes claimant did not sustain an injury that arose out of and in the course of his employment. Additionally, claimant was unable to establish the requisite causation in this case. As a result claimant takes nothing in these proceedings.

All other issues are moot.

ORDER

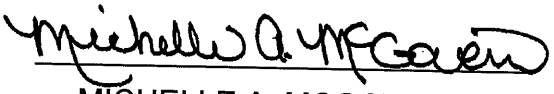
THEREFORE, IT IS ORDERED:

Claimant takes nothing from these proceedings.

Each person/party shall pay his/its own costs.

Defendant shall file all reports as required by law.

Signed and filed this 9th day of February, 2018.



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