

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VANCE MATTISON,

Claimant,

vs.

BRIDGESTONE AMERICAS TIRE
OPERATIONS, LLC,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 21700422.01

ARBITRATION DECISION

Head Notes: 1108.50, 1402.30, 1701,
1802, 1803, 2206, 2505,
2907

Vance Mattison, claimant, filed a petition in arbitration seeking workers' compensation benefits from Bridgestone Americas, Inc., employer, and Old Republic Insurance, as defendants. The hearing was held on May 16, 2022. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom with all parties and the court reporter appearing remotely.

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

Vance Mattison was the only witness to testify live at trial. The evidentiary record also includes joint exhibits 1-7, claimant's exhibits 1-3, and defendants' exhibits A- E. Following the hearing, the evidentiary record was left open until June 15, 2022, so that defendants could seek records from claimant's current employer, as well as records documenting claimant's most recent medical treatment. On June 6, 2022, defendants filed an additional exhibit—joint exhibit 8. Defendants filed two more exhibits on June 15, 2022—defendants' exhibits F and G. The evidentiary record closed after the receipt of those exhibits. All exhibits were received into the record without objection.

The parties submitted post-hearing briefs on July 18, 2022, at which time the case was fully submitted to the undersigned.

ISSUES

The parties identified the following disputed issues on the hearing report:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Bridgestone Americas, Inc. on June 22, 2020.
2. Whether the alleged injury resulted in any permanent disability; and if so,
3. The nature and extent of claimant's entitlement to permanent disability benefits.
4. Whether the claimant is entitled to temporary disability or healing period benefits because of the alleged injury.
5. The commencement date for permanent partial disability benefits if any are awarded.
6. Whether claimant is entitled to payment of the medical expenses in claimant's exhibit 3.
7. Whether claimant is entitled to recover the cost of an independent medical examination pursuant to Iowa Code section 85.39
8. Assessment of costs.

FINDINGS OF FACT

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

At the time of the hearing the claimant, Vance Mattison (hereinafter "Mattison"), was 52 years old. (Hearing Transcript, p. 13). Mattison lives with his wife and elderly father in Baudette, Minnesota. (Id.). Mattison graduated from East High School in 1987. (Id. at 14). After high school, Mattison attended two semesters at Hamilton College, studying internet technology. (Id.). He also took a refrigeration course through Des Moines Area Community College (DMACC). After high school, Mattison briefly worked in a factory that produced furnaces, before starting his own heating and cooling business. (Ex. 2, p. 14). From 1988 through 1995, Mattison owned and ran B & B Heating and Cooling, installing and repairing furnaces. (Id.). In 1995, Mattison decided to close his business and take a position at Bridgestone, n/k/a Firestone, because he was tired of being on call 24/7. (Id.).

Mattison started as a Boom Operator at Bridgestone Americas, Inc. (hereinafter "Bridgestone"). (Tr., pp. 16-17). A Boom Operator presses and forms raw materials into the shape of a tire. (Id. at 17). He performed this job for one year before transferring into the final inspection department. (Tr., p. 18). In that position, Mattison inspected,

trimmed, and repaired tires. (Id.). He stayed there for approximately a year before becoming a tire builder. (Id. at 19). As a tire builder Mattison was responsible for “throwing stock.” (Id. at 19-20). This required him to unroll spools of rubber stock and then splice the rubber pieces together into a “ply.” (Id. at 20). Mattison testified that each piece of rubber weighed 22 pounds, and every tire needed 10 plies. (Id.). Once the rubber was spliced, Mattison would pull apart beads, which are wires that are embedded within the tires for strength. (Id. at 21). Once the wires are apart, they are set within the plies, and then Mattison would do two hand turn-ups. (Id.). The next step in the process was putting the sidewalls on the tire building drum. (Id.). Mattison testified the sidewalls were 10 feet long and weighed 80 pounds. (Id.). To put them on, Mattison would have to throw them over his shoulder. (Id.). Mattison testified he and his work partner generally built around 14 tires a day. (Id. at 22-23).

Mattison worked as a tire builder at Bridgestone for twenty-four years. (Tr., p. 19). He turned in his resignation on February 11, 2021. (Ex. B). In April 2021, Mattison sold his house in Iowa and moved to Baudette, Minnesota, where he already owned a home.¹ (Tr., pp. 66-67). At the time of the hearing Mattison was not working but planned to start a job at Polaris Industries the Monday after the hearing. (Id. at 38). Prior to getting this position, Mattison applied for jobs at ANI—a pharmaceutical company,² a cashier position at NAPA Auto Parts, a cashier position at Cenex, and a job driving a forklift at Marvin Windows. (Id. at 57-62; Ex. D, p. 4). At Polaris Industries, Mattison works full time and makes \$18.68 an hour. (Ex. F, p. 1). The job description provided by Polaris indicates Mattison is an Assembly Operator, but at the hearing Mattison testified he would be driving a forklift. (Id.; Tr., p. 38). An Assembly Operator is required to push/pull up to 100 pounds and lift up to 40 pounds. (Ex. F, p. 1).

Mattison alleges he suffered work injuries to his neck and left shoulder on June 22, 2020. (See Petition). At the hearing, he testified he was using a hand crank with his right arm to unroll a big spool of rubber stock. (Tr., pp. 29-30; Ex. D, p. 6). It got stuck, so he pulled on it with his left arm, and then heard something pop or crack in his left shoulder and felt pain. (Id.). He completed the tire he was working on and then went and notified his supervisor of the incident. (Tr., p. 30). The next day, Mattison was evaluated by Todd Troll, M.D., at the Bridgestone Medical Department. (Id. at 31-32). Dr. Troll put him on light duty restrictions and referred him for physical therapy. (Id. at 32; CI Ex. 1, p. 2). Mattison followed-up with Dr. Troll on July 7, 2020. (JE 6, p. 51). At that appointment Mattison told Dr. Troll his left shoulder pain was improving. (Id.).

Mattison saw Dr. Troll again on July 15, 2020. (JE 6, p. 51). At that visit, his prominent complaint was neck pain that radiated into his left shoulder and scapular region. (Id.). Dr. Troll diagnosed Mattison with possible cervical radiculopathy and ordered an MRI of his cervical spine. (Id.). That MRI was performed on July 24, 2020. (JE 5, p. 49). It revealed multilevel spondylosis, most pronounced at C5-6 and C6-7.

¹ Mattison purchased the Baudette home in June or July 2020. (Ex. D, p. 1).

² Mattison was offered a job at ANI but turned it down because he didn’t think he could physically do the job. (Tr., p. 60; Ex. D, p. 5).

(Id. at 50). Dr. Troll reviewed the MRI and changed his diagnosis to cervical spondylosis, non-work related, and left shoulder impingement syndrome. (JE 6, p. 51). Dr. Troll instructed Mattison to continue to perform exercises for his shoulder and neck. (Id.). He also instructed him to work at his own pace. (Id.).

Mattison continued to treat with Dr. Troll. (JE 6, p. 52). In August 2020, Dr. Troll ordered an MRI of Mattison's left shoulder. (Id.). This MRI was performed on October 2, 2020. (See CI Ex. 1, p. 2). It showed moderate infraspinatus tendinosis and mild supraspinatus tendinosis, moderate degenerative changes in his acromioclavicular (AC) joint, and signal changes in the glenoid labrum. (Id.). Mattison followed-up with Dr. Troll on October 12, 2020. (JE 6, p. 52). At that appointment Dr. Troll opined that Mattison's left shoulder condition was degenerative and unrelated to his work at Bridgestone. (Id. at 53).

On October 14, 2020, Mattison presented to his family care provider, Leann Nelson, ARNP, with left shoulder pain. (JE 3, p. 33). Nurse Nelson diagnosed him with degenerative disease of the AC joint and a strain of the left infraspinatus tendon. (Id. at 34). She recommended ROM exercises for his shoulder, provided him with work restrictions, and completed FMLA paperwork. (Id. at 34-36). After seeing Nurse Nelson, Mattison applied for and received short-term disability benefits. (Ex. D, pp. 4, 7). At the hearing, the parties stipulated Mattison was paid \$5,820.99 in short-term disability benefits. (See Hearing Report). Mattison did not return to work at Bridgestone after seeing Nurse Nelson.³ (See Ex. D, p. 4).

Mattison had a follow-up visit with Nurse Nelson on November 18, 2020. (JE 3, p. 37). He was still experiencing shoulder pain. (Id.). Nurse Nelson renewed his work restrictions and completed FMLA paperwork. (Id. at 38). Her treatment note indicates Mattison was already scheduled to see orthopedics the next week. (Id.).

On November 23, 2020, Mattison was evaluated by Jeffrey Davick, M.D., a surgeon at Des Moines Orthopaedic Surgeons, P.C. (JE 7, p. 54). Mattison told Dr. Davick that he injured his left shoulder at work on June 22, 2020. (Id.). He complained of superior left shoulder pain that radiated. (Id.). Dr. Davick diagnosed Mattison with left shoulder impingement, mainly AC joint in nature. (Id. at 55). He injected the left AC joint and referred him for physical therapy. (Id.). Dr. Davick noted Mattison seemed "a little reluctant to do therapy." (Id.).

At the request of defendants, Mattison was also evaluated by Kyle S. Galles, M.D., a surgeon at Iowa Ortho on December 15, 2020. (JE 7, p. 58; see Defendants' Brief, p. 2). Dr. Galles noted Mattison had recently received an injection into his left AC joint that did provide some pain relief. (Id.). Dr. Galles indicated that in addition to the left shoulder pain, Mattison "also now has issues of neck pain." (Id.). Dr. Galles diagnosed Mattison with arthritis of the left AC joint and rotator cuff impingement

³During his deposition, Mattison testified his last day physically working for Bridgestone was October 12, 2020. (Ex. D, p. 4).

syndrome of the left shoulder. (Id. at 59). Dr. Galles also provided a causation opinion. (Id.). He stated,

[I]t is my opinion that the work he has done at Firestone building tires for the past 20+ years more likely than not has been a significant contributing factor to him now having fairly substantial degenerative arthritis at the acromioclavicular joint which is causing pain in that area and also causing some rotator cuff impingement type pain as well.

(JE 7, p. 59). Dr. Galles recommended surgery—a subacromial decompression, Mumford procedure, and possible rotator cuff repair procedure. (Id.). Mattison stated he wanted to think about whether to proceed with the surgery. (Id.). Mattison also asked Dr. Galles questions about his cervical complaints, but Dr. Galles told him that area was outside of his expertise and Mattison would have “to seek opinions and treatment elsewhere for that condition.” (Id.). Dr. Galles stated that if Mattison decided to return to work he would recommend restrictions of minimized work over shoulder height with the left upper extremity. (Id.). Mattison did not return to see Dr. Galles.

Mattison had one follow-up visit with Dr. Davick on January 4, 2021. (JE 7, p. 56). He stated his pain was worse and had migrated into both his shoulder blades and neck. (Id.). Mattison said he was trying to file a workers’ compensation claim for his pain complaints and was not currently attending physical therapy. (Id.). Mattison told Dr. Davick that “he just need[ed] to get through February and then he is retiring.” (Id.). Dr. Davick asked if he was going to seek treatment for his left shoulder or neck after he retired. (Id.). Mattison indicated he might go see someone for his neck issues. (Id.). Dr. Davick’s note reads,

I did tell Vance I was more interested in taking care of the shoulder as opposed to filling out forms to get him through February; he said he understood this. He really seems convinced that his neck is more of an issue.

(Id.). Dr. Davick completed Mattison’s work forms, providing him with restrictions of no lifting more than 20 pounds with the left arm and no work above shoulder height with the left arm. (Id.).

On January 15, 2021, Nurse Nelson was asked for her opinion on the cause of Mattison’s left shoulder issues. (JE 3, p. 40). Her response was as follows:

Yes, there is possibility that overuse and repetitive movement involving the left shoulder could have caused arthritic changes and straining of tendon overtime. [*sic*] As time progressed symptoms can arise due to chronic overuse causing pain. Refer to orthopedics for further recommendations.

(Id.). On February 4, 2021, claimant again returned to see Nurse Nelson for low back and hip pain. (Id. at 41). Nelson’s treatment note indicates he had been experiencing

the back pain for about three months. (Id.). According to the treatment note, it started when he was working on his house to get it ready to sell. (Id.). Mattison's hip pain was longstanding and related to his work at Bridgestone. (Id.). Nurse Nelson diagnosed him with chronic bilateral hip pain, elevated liver enzymes, bilateral hamstring strains, status post lumbar laminectomy⁴ and piriformis syndrome. (JE 3, p. 44). Nelson's notes indicate Mattison had not followed up with Dr. Davick for his left shoulder pain, he was seeing "Workman's Comp" and waiting to hear back on a plan of care. (Id. at 42).

At the behest of his attorney, Mattison attended an independent medical exam (IME) with Robert Rondinelli, M.D., on April 1, 2021.⁵ (CI Ex. 1). Prior to the examination, Dr. Rondinelli reviewed Nurse Nelson's records from October 14, 2020, and January 15, 2021. (Id.). He also reviewed the MRIs of Mattison's left shoulder and cervical spine, and treatment records from Dr. Davick and Dr. Galles. (Id.). Dr. Rondinelli diagnosed Mattison with multilevel cervical spondylosis, degenerative joint disease affecting the left AC joint, type II acromion with impingement syndrome of the left shoulder, cervicgia, and sprain of the left infraspinatus tendon with rotator cuff deficiency. (Id. at 7). Dr. Rondinelli opined that Mattison's cervical disk disease and joint disease of the left AC joint were pre-existing underlying conditions but were substantially aggravated and/or materially worsened by his work duties at Bridgestone. (Id.). He found the left supraspinatus sprain was directly caused by the work he was performing on June 22, 2020. (Id.). Dr. Rondinelli agreed with Dr. Galles' surgical recommendation. (Id.). However, Dr. Rondinelli stated Mattison was at maximum medical improvement (MMI) if he chose not to pursue surgery. (Id.). He assigned Mattison 8 percent permanent impairment to the body-as-a-whole, citing to Tables 15-12, 15-13, 15-14 and 15-17 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Id. at 8-9). He also assigned permanent impairment to Mattison's left shoulder. (Id. at 9-11). He assigned 7 percent permanent impairment to the left upper extremity for loss of range of motion in the shoulder joint, citing to Figures 16-40, 16-43 and 16-46. (Id. at 9-10). He also provided an alternative rating of 20 percent permanent impairment of the left upper extremity for strength loss. (Id. at 11). Dr. Rondinelli recommended restrictions of occasional lifting 20-50 pounds, frequent lifting 10-25 pounds, avoid any lifting or carrying above shoulder level with the left arm, and avoid repetitive activity at or above shoulder level with the left arm. (Id.).

At the request of defendants, Mattison underwent a second IME with Peter Matos, D.O., on March 11, 2022. (Ex. A). Dr. Matos' report contains a list of the medical records he reviewed prior to issuing his report. (Id. at 6-13). It includes records from Stickel Chiropractic, West Lakes Sleep Center, David Boarini, M.D., at the Iowa Clinic, Nurse Nelson at UnityPoint Health, Iowa Methodist Medical Center, Dr. Troll and Pete Goshorn, RN, at Bridgestone Medical, DIA, Dr. Davick and Dr. Acebey at DMOS, Dr. Galles at Iowa Ortho, and Dr. Rondinelli's IME report. (Id.). Dr. Matos diagnosed

⁴ The medical records show Mattison underwent an L4-L5 hemilaminectomy, medial facetectomy, and disk excision with David Boarini, M.D., on January 29, 2019. (JE 2, p. 8). During his deposition Mattison claimed this injury was caused by his work at Bridgestone, but he decided not to turn it in as a workers' compensation claim because he didn't want his employer to dictate how it would be treated. (Ex. D, p. 3).

⁵ Dr. Rondinelli released his IME report on April 14, 2021. (CI Ex. 1).

Mattison with cervical disk disease, degenerative joint disease affecting the left AC joint, and type II acromion of the left shoulder. (Id. at 5). He indicated these conditions were pre-existing conditions caused by genetics and aging. (Id.). He did not find any injury to Mattison's left shoulder and/or neck as a result of the alleged work incident on June 22, 2020. (Id.). Dr. Matos did not assign any permanent impairment for the incident on June 22, 2020, nor did he recommend any work restrictions or future treatment. (Id. at 5-6).

In April 2022, Mattison obtained a vocational evaluation from Carma Mitchell, M.S. (CI Ex. 2). Ms. Mitchell interviewed Mattison and reviewed Dr. Rondinelli's IME report. (Id.). Mattison told Mitchell he experiences daily throbbing pain in his left shoulder that goes up into his neck. (Id. at 15). He stated the pain increased with movement such as reaching out to the side, as well as overhead lifting and carrying. (Id.). He also complained of reduced grip strength in his left hand. (Id.). He estimated he can lift up to 10 pounds below shoulder level with his left arm. (Id.). He complained of difficulty twisting and turning his neck. (Id.). Mattison stated he was no longer able to do household chores such as shoveling snow. (Id.). He also cannot bowl or golf. (Id.). Since moving to Minnesota, he has taken his fishing boat out 6-8 times, but finds it difficult to lift the fishing pole. (Id.). Ms. Mitchell stated Mattison could not return to his previous job at Bridgestone with the restrictions suggested by Dr. Rondinelli. (Id. at 16). She opined he had lost access to 25 percent of the jobs he had access to prior to his work injury and had a 69 percent loss of earnings. (Id.).

At the hearing, Mattison testified that he had not sought any medical treatment for either his left shoulder or his neck since moving to Minnesota in April 2021. (Tr. pp. 75-76). Medical records show Mattison received treatment at CHI Lakewood Health on April 15, 2022, for seizures and withdrawal symptoms from alcoholism. (JE 8). The treatment note indicates Mattison had been a heavy drinker all his life and had seizures in the past when he tried to quit. (Id. at 2).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciba, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer 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.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated,

accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The record contains several different causation opinions for Mattison's left shoulder issues. Of these, I find Dr. Galles to be the most persuasive. Dr. Galles is an orthopedic surgeon that specializes in shoulder procedures. (See JE 7, p. 59; see also Tr., p. 75). Additionally, he was retained by the defendants. (See Defendants' Brief, p. 2). Dr. Galles opined Mattison's work at Bridgestone was a significant contributing factor to the substantial degenerative arthritis in his left AC joint and rotator cuff impingement syndrome. (JE 7, p. 59). This opinion is supported by the weight of the evidence. The medical providers agree Mattison has degenerative arthritis in his left AC joint. (See JE 6, p. 52; JE 3, p. 34; JE 7, p. 55; CI Ex. 1, p. 7; Ex. A, p. 3). However, Mattison did not seek any medical treatment for this condition until after the work incident on June 22, 2020- it was asymptomatic. Mattison worked as a tire builder for 15 years. His job was physical and repetitive. On average he built 14 tires a day which required him to hand crank rolls of rubber stock. (Tr., p. 20). He would also have to throw and lift rubber sidewalls that weigh 80 lbs. (Id. at 21). The evidence support's Dr. Galles' opinion that these work duties contributed to and aggravated the arthritis in Mattison's left AC joint. Dr. Galles' opinion is adopted by the undersigned. Mattison's left shoulder condition arose out of and in the course of his employment with Bridgestone.

The evidence, however, does not support a finding that Mattison sustained a work-related injury to his neck on June 22, 2020. The evidence consistently points to Mattison's left shoulder as the source of his pain complaints. At the hearing, Mattison testified he was pulling on a piece of rubber stock when he heard a pop or crack in his left shoulder and felt pain. (Tr., pp. 29-30). This matches the testimony Mattison gave during his deposition. (Ex. D, p. 6). It also matches the explanations Mattison provided to Nurse Nelson, Dr. Davick, Dr. Galles, Dr. Rondinelli, Dr. Matos, and Carma Mitchell. (JE 3, p. 33 ("here today for left shoulder pain"); JE 7, p. 54 ("states that he injured the left shoulder at work on 06/22/2020 pulling a large rubber sidewall"); JE 7, p. 58 ("he was pulling on some stock that was caught in the machinery and started having significant pain in his left shoulder"); CI Ex. 1, p. 2 ("he noted a popping sensation in his left collarbone"); Ex. A, p. 3 ("he felt a popping sensation in his left collarbone"); CI Ex. 2, p. 14 ("he was pulling stock out of liners and his left shoulder popped")). Neither claimant's testimony, nor the treatment records support a finding that Mattison sustained a neck injury on June 22, 2020.

Objective medical testing also failed to find an injury to Mattison's cervical spine. On July 24, 2020, an MRI was taken of Mattison's cervical spine. (JE 5, pp. 49-50). It showed degenerative changes on multiple levels but no disc herniations, severe spinal canal stenosis, or cord compression. (Id.). Dr. Troll, Dr. Davick, Dr. Matos, and Dr. Rondinelli all agree that the MRI shows degenerative disc disease. (See JE 6, p. 51; JE 8, p. 56; Ex. A, p. 5; CI Ex. 1, p. 7). However, only Dr. Rondinelli opines that the work incident on June 22, 2020, caused a strain-type injury to his neck and substantially

aggravated this pre-existing condition. (CI Ex. 1, p. 7). As stated above, there is no medical or testimonial support for this assertion. Mattison has always described the work injury as occurring to his left shoulder and the treatment records show Mattison consistently sought care for left shoulder pain, not neck pain. There is not substantial evidence to support a finding that Mattison sustained a neck injury on June 22, 2020.

The next issue to be decided is the extent of Mattison's disability. Our workers' compensation statute provides compensation for permanent partial disability (PPD) for injuries to specific parts of the body pursuant to an established schedule. See Iowa Code § 85.34(2) (1995); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 269 (Iowa 1995). This schedule sets the compensation at a percentage of a workers' average weekly earnings over a certain number of weeks based on the location of the injury. Id.

The Iowa Legislature enacted significant amendments to the Iowa workers' compensation laws, which took effect July 1, 2017. Of relevance to this case, the Iowa Legislature modified section 85.34 in 2017 by adding the shoulder to the list of scheduled members. See Iowa Code § 85.34(2)(n).

The Iowa Supreme Court in Chavez v. MS Tech., LLC., 972 N.W.2d 662 (Iowa 2022), and Deng v. Farmland Foods, Inc., 972 N.W.2d 727 (Mem) (Iowa 2022), affirmed that the shoulder was construed in a functional sense to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that were essential for the shoulder to function. Dr. Galles diagnosed Mattison with arthritis of the left AC joint and rotator cuff impingement syndrome of the left shoulder. (JE 7, p. 59). Based on the foregoing, Mattison has sustained a left shoulder injury subject to recovery under Iowa Code section 85.34(2)(n).

Dr. Rondinelli is the only physician that provided a permanent impairment rating for Mattison's left shoulder injury. In his report, he gave two potential alternative impairment ratings. He assigned 7 percent permanent impairment to the left upper extremity for lack of flexion, extension, abduction, and internal and external rotation in the left shoulder, citing to Figures 16-40, 16-43 and 16-46 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CI Ex. 1, pp. 9-10). Dr. Rondinelli also provided an alternative rating of 20 percent permanent impairment of the left upper extremity for strength loss. (Id. at 11). His report states,

Another way to look at Mr. Mattison's functional losses due to his left neck and shoulder conditions is revealed by considering their impact upon his LUE strength. Vance showed a remarkably consistent strength loss affecting his left upper extremity (which is his dominant extremity) as measured with a Jaymar dynamometer. . . . Mr. Mattison's consistent effort in the context of his overall presentation convinces me that this was a genuine strength deficit, most probably reflecting nociceptive input from the shoulder and neck due to the above conditions. . . . In any event according to the methodology of the *AMA Guides*, 5th Ed, Table 16-34 on page 509, a

strength loss index can be calculated . . . this translates to a 20% UEI rating.

. . .

(Id. at 10-11).

Under Iowa Code section 85.34(x), claims of functional disability are to be determined by applying the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This Agency has cautioned against impairment ratings that do not comply with the AMA Guides. See Hill v. Vermeer Corporation, File No 5066032 (App. Jan. 30, 2020). Notwithstanding Dr. Rondinelli's use of Mattison's neck complaints, which are not compensable, the Hill decision states,

[T]he AMA Guides caution physicians against assigning impairment for loss of strength. Section 16.8 on page 507 provides the AMA Guides do not assign a large role to strength measurements due to the fact strength measurements are functional tests influenced by subjective factors that are difficult to control. Review of Section 16.8a of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, page 508, indicates:

In a rare case, if the examiner believes the individual's loss of strength represents an impairing factor that has not been considered adequately by other methods in the *Guides*, the loss of strength may be rated separately. An example of this situation would be loss of strength due to a severe muscle tear that healed leaving a palpable muscle defect. If the examiner judges that loss of strength should be rated separately in an extremity that presents other impairments, the impairment due to loss of strength could be combined with the other impairments, only if based on unrelated etiologic or pathomechanical causes. Otherwise, the impairment ratings based on objective anatomic findings take precedence. Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts (e.g., thumb amputation) that prevent effective application of maximal force in the region being evaluated.

See Hill, at p. 4 (emphasis added). Dr. Rondinelli provides his strength impairment without explanation or confirmation that the impairment due to loss of strength is based on unrelated etiologic or pathomechanical causes in Mattison's left shoulder. It is also clear from his alternate impairment rating that Mattison has decreased motion in his shoulder joint. Dr. Rondinelli's alternate strength loss rating is not consistent with the AMA Guides and cannot be relied upon. In contrast, Dr. Rondinelli's impairment rating for loss of range of motion complies with the AMA Guides and is supported by the medical records. I find Mattison sustained 7 percent permanent impairment to his left

upper extremity as a result of his work injury. The commencement date for these benefits shall be April 1, 2021, the date Dr. Rondinelli evaluated Mattison and placed him at MMI.

Mattison seeks temporary total or healing period benefits from October 12, 2020, through April 14, 2021. (See Hearing Report). Mattison's left shoulder injury resulted in permanent impairment; thus, the benefits he seeks are healing period benefits. See Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

Iowa Code section 85.34(1) governs healing period benefits. It states as follows,

[T]he employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee 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 § 85.34(1). Mattison's last day working at Bridgestone was October 12, 2020. (See Ex. D, p. 4). Dr. Rondinelli placed Mattison at MMI during his examination on April 1, 2021. (See CI Ex. 1, pp. 1, 8). Mattison started work at Polaris on May 23, 2022. (See Tr., p. 38).

In their post-hearing brief defendants argue Mattison is only entitled to healing period benefits from October 12, 2020, through February 12, 2021, because he voluntarily resigned his employment at Bridgestone on that date even though no doctor had placed him at MMI or given him permanent restrictions. (Defendants' Post-Hearing Brief, p. 15). Defendants point out Mattison chose to cash in his pension and move to his cabin in Minnesota. (Id.). They further point out that Mattison made very little effort to find employment. (Id.). While these statements are supported by the hearing evidence, the Iowa Code determines entitlement to healing period benefits by whether an employee has returned to work or is capable of returning to substantially similar employment; not on an employee's motivation to work. On October 14, 2020, Mattison was given work restrictions by Nurse Nelson. (JE 3, pp. 34-36). Utilizing Nelson's restrictions, Mattison applied for and received short-term disability benefits until his resignation in February 2021. (Ex. D, pp. 4, 7). Given this, it appears Mattison could not return to substantially similar employment with the restrictions Nurse Nelson provided for his left shoulder. The record is silent on whether/when those work restrictions were lifted.

Dr. Rondinelli placed Mattison at MMI during his examination on April 1, 2021. (See CI Ex. 1, pp. 1, 8). This is the first event to trigger the end of Mattison's healing period. Mattison is entitled to healing period benefits from October 12, 2020, through April 1, 2021. The parties have stipulated that under Iowa Code 85.38(2), defendants are entitled to a credit for the \$5,820.99 Mattison received in short-term disability

benefits during this period. (See Hearing Report). Mattison's entitlement to healing period benefits shall be offset by defendants' credit of \$5,820.99.

Mattison seeks payment of the medical expenses listed in claimant's exhibit 3. Exhibit 3 shows that Mattison made several payments to Des Moines Orthopaedic Surgeons, P.C., for treatment he received from November 23, 2020, through February 4, 2021. (CI Ex. 3, p. 21). According to the medical records, this treatment was for Mattison's left shoulder injury. (See JE 7; Ex. A, pp. 11-13).

For all compensable injuries under Iowa Code chapter 85 or 85A, the employer must "furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services." Iowa Code § 85.27(1). Here, the defendants denied liability and refused care. After they did so, Mattison sought his own care.

The defendants' denial of liability means they lost the right to choose the care for the work injury. Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567, 575 (Iowa 2006) (citing Trade Profs, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003)). Mattison could therefore obtain reasonable care from any provider for the injury, at his expense, and seek reimbursement for such care through this contested case proceeding. See Trade Profs, 661 N.W.2d at 121–25 (affirming on judicial review an agency decision ordering the payment of medical expenses for unauthorized care because the defendants denied liability for the alleged injury and therefore lost the right to control care). Mattison is entitled to payment of the medical expenses listed in claimant's exhibit 3.

Mattison is seeking reimbursement for the IME performed by Dr. Rondinelli. Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l

Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015). Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician. On October 12, 2020, Dr. Troll opined Mattison's left shoulder condition was degenerative and unrelated to his work at Bridgestone. (JE 6, p. 52). An "opinion on lack of causation [is] tantamount to a zero impairment rating," which is reimbursable under Iowa Code section 85.39. Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W.2d 326 (Table) (Iowa Ct. App. 2021). Given this, Mattison is entitled to reimbursement for the cost of Dr. Rondinelli's IME.

Mattison seeks the award of costs outlined in claimant's exhibit 3. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Rule 4.33; Iowa § Code 86.40. Administrative Rule 4.33(86) provides:

Costs 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

876 IAC 4.33(86).

Mattison incurred costs of \$100.00 for the filing fee for his petition. (CI Ex. 3, p. 18). Mattison's left shoulder condition is compensable. Given this, he is due the cost of his filing fee.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay Mattison seventeen point five (17.5) weeks of permanent partial disability benefits at the stipulated rate of nine hundred seventy-three and 55/100 dollars (\$973.55) per week commencing on April 1, 2021.

Defendants shall pay Mattison twenty-four (24) weeks and three (3) days of healing period benefits at the rate of nine hundred seventy-three and 55/100 (\$973.55) per week for the time period from October 12, 2020, through April 1, 2021. Defendants, however, are entitled to a credit of five thousand eight hundred twenty and 99/100

dollars (\$5,820.99) for the short-term disability benefits Mattison received during this period.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants shall pay the medical expenses listed in claimant's exhibit 3.

Defendants shall reimburse claimant for the IME conducted Dr. Rondinelli in April 2021 in the amount of three thousand dollars (\$3,000.00).

Defendants shall pay costs of one hundred dollars (\$100.00).

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

Signed and filed this 1st day of November, 2022.

A handwritten signature in black ink that reads "Amanda Rutherford". The signature is fluid and cursive, with the first name "Amanda" and last name "Rutherford" clearly distinguishable.

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathaniel Boulton (via WCES)

Timothy Wegman (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.