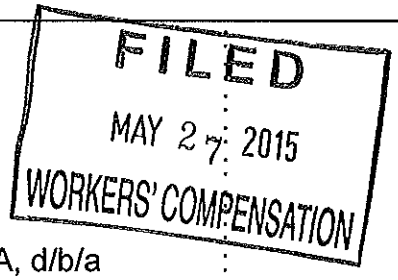
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



KARLA MYLES, Claimant, vs. LABOR WORLD OF IOWA, d/b/a USA STAFFING, INC., Employer, and ZURICH AMERICAN INSURANCE CO., Insurance Carrier, Defendants.	File No. 5045097 ARBITRATION DECISION Head Note No.: 1803

STATEMENT OF THE CASE

Karla Myles, the claimant, seeks workers' compensation benefits from defendants, Labor World of Iowa, Inc., d/b/a USA Staffing, an Iowa employer, and its insurer, Zurich American Insurance Co., as a result of a work injury on August 23, 2011. The caption of this case shall change accordingly.

Presiding in this matter is Larry P. Walshire, a deputy Iowa Workers' Compensation Commissioner. An oral evidentiary hearing commenced on April 29, 2015, but the matter was not fully submitted until the receipt of the parties' briefs and argument on May 15, 2015. Oral testimonies and written exhibits received into evidence at hearing are set forth in the hearing transcript.

Claimant's exhibits were marked numerically. Defendants' exhibits were marked alphabetically. References in this decision to page numbers of an exhibit shall be made by citing the exhibit number or letter followed by a dash and then the page number(s). For example, a citation to claimant's exhibit 1, pages 2 through 4 will be cited as, "Exhibit 1-2:4." References to a page of a transcript shall be to the actual page number of the original transcript, not to the page number of a copy containing multiple pages of the original transcript.

The parties agreed to the following matters in a written hearing report submitted at hearing:

1. On August 23, 2011, claimant received an injury arising out of and in the course of employment with defendant employer.

2. Claimant is seeking temporary total or healing period benefits only from August 23, 2011 through November 22, 2011 and defendants agree that she was off work during this period of time.

3. At the time of the alleged injury, claimant's gross rate of weekly compensation was $360.00. Also, at that time, she was single and entitled to one exemption for income tax purposes. Therefore, claimant's weekly rate of compensation is $239.72 according to the workers' compensation commissioner's published rate booklet for this date of injury.

4. Medical expenses are in dispute, but the parties agreed that they will work out claimant's entitlement to such expenses based on my findings in this decision as to the nature and extent of the stipulated work injury.

ISSUES

The only issue submitted by the parties for determination is the extent, if any, of claimant's entitlement to weekly temporary total or healing period benefits and permanent disability benefits.

FINDINGS OF FACT

In these findings, I will refer to the claimant by her first name, Karla, and to the defendant employer as Staffing.

Karla, age 47, is seeking compensation for the following medical conditions which she attributes to the stipulated work injury:

1. Chronic left forearm pain with intermittent swelling;

2. Continued weakness along with numbness and tingling in the left hand and fingers subsequent to left carpal tunnel syndrome and release surgery;

3. Left sided upper arm pain extending to the left shoulder and neck; and

4. Left lower back, left hip and left leg pain or aching.

Karla is right hand dominant. (Ex. A-59) Although she only completed the ninth grade in the public school system, she later obtained a GED. Over the next few years, Karla completed course work to obtain an Associate's Degree in General Studies from Hawkeye Community College in 1997. She went on to earn a Bachelor's Degree in Social Work from University of Northern Iowa in 2000 and a Master's Degree from Liberty University in 2010 with a focus on Marriage and Family services. Despite her higher education accomplishments, Karla stated at hearing 80 percent of the jobs she has held involved only clerical and data entry work. Only a few jobs after receiving her decrees allowed her to utilize her education. (Exhibit 2)

There is no dispute that Karla had prior health problems such as depression, osteoarthritis in the cervical spine and right hip, degenerative disc disease in the mid and lower spine; migraine headaches and a history of carpal tunnel syndrome and corrective surgery in the right wrist. (Ex. A- 10:11, 46; Ex. E-1:2; Ex. H) She ended a prior job due to a nervous breakdown. (Ex. A-11) Karla also received treatment for back and right hip pain following a motor vehicle accident in 1985 and considered applying for disability due to her health conditions after that accident. (Ex A-43; C-7) On May 12, 2011, Karla was treated at the Covenant Clinic for the onset of right-sided lumbosacral back pain after moving furniture at home. She was treated with medications and the records in evidence only show one medical office visit for this back injury. There are no further records in evidence of prior medical treatment. Karla asserts that she was not having significant left-sided pain or receiving active treatment of any prior condition at the time of her work injury in this case. She was, however, on two to three medications for her mental problems at the time of her injury in this case. (Ex. A-89)

At the time of her stipulated work injury on August 23, 2011, Karla was employed by Staffing, a temporary employment agency. She was assigned to a temporary manual labor job removing mold from a school building. The injury involved an electrical shock Karla received while cleaning the top of a boiler with a wet rag and her left forearm touched an electrical box. The amount of the voltage and current she received is not known. She did not suffer an electrical burn wound, and was able to climb down on a ladder after this incident. According to Karla only a red spot developed in that area of her foreman that touched the box. Karla asserts that her symptoms after this incident were not limited to the red spot. She said cramping and a burning type of pain developed in her entire left forearm and the left side of her back along with dizziness. (Ex. A-24:26)

After reporting her injury to her supervisor, she rested for about 30-45 minutes and then her left hand locked up. She then sought medical treatment and Staffing sent her to Allen Occupational Health Clinic. Kenneth McMains, M.D., at this clinic immediately sent her to the Allen Memorial Hospital Emergency Department. (Ex. E-6) Testing and imaging by the ER staff revealed no abnormalities and Karla was discharged with instructions to perform stretching exercises of her arm, neck and shoulder. (Ex. 10) The next day on August 24, 2011, she was seen again by Dr. McMains and reported continued left arm pain with left finger numbness and tingling. A pain diagram completed by Karla at this time indicated symptoms from the left lower neck, left shoulder, and the entire left arm down to the left hand and fingers. She was given activity restrictions limiting use of the left extremity and limiting lifting to ten pounds. (Ex. 11-27:30) She attempted to return to work, but was not allowed to do so due to these restrictions. (Ex. A-28)

An evaluating physician in this case, Joseph Chen, M.D., states that he reviewed medical records showing another pain diagram completed by Karla two days later on August 26, 2011 in which she indicated pain over her left flank and lateral hip. (Ex. B-2) The evidence in this case does not contain this pain diagram.

On September 9, 2011, Karla returned to Dr. McMains. Apparently, she completed another pain diagram similar to the one she completed on August 24, 2011 which includes the left arm and shoulder, but not hip or buttocks pain. (Ex. B-2) This diagram is also not in evidence. In a report authored by Dr. McMains, he states that Karla at this time complained of continued arm pain and he lifted all restrictions except to avoid ladder climbing until November 29, 2011 at which time she will be at maximum medical improvement (MMI). The hand written office note of this visit is mostly not readable except for the diagnosis of electrical injury of the left upper extremity and the restriction about ladder climbing. (Ex. 11-32)

On September 15, 2011, Karla returned to Allen Hospital and saw Joshua Helman, M.D. Dr. Helman reports Karla had not improved and was now complaining of hip pain which began one day after the injury. The doctor provided an information sheet that low voltage and current electric shocks may be painful, but rarely cause more than a minor burn. She was then referred to Islam M. Tafish, M.D., a neurologist. Karla reported that this referral was not authorized by defendants. (Ex. B-2)

The evidence does not contain any office notes or treatment records from providers concerning Karla's treatment at the University of Iowa Hospitals and Clinics (UIHC) on September 15, 2011 and November 1, 2011 and from the Peoples Clinic on November 9, 2011. The only record of these visits in evidence comes again from Dr. Chen's report. (Ex. B-3:4) There was a referral by UIHC doctors to a neurologist, which did not take place. Also, a UIHC doctor stated that although Karla believes all of her pain is caused by the electrical shock, he was more suspicious of some osteoarthritis of the back and SI joint and of a left carpal tunnel syndrome with referred pain. The Peoples Clinic just reported Karla's complaints involved her whole body. (Id)

As a result of a guilty plea to a federal tax fraud charge, Karla was sentenced to 18 months in prison. She began this sentence on November 22, 2011, but was released early and placed on parole on November 14, 2012. Karla had three visits to the prison's health clinic while in prison. On November 28, 2011, she sought treatment for her right ankle after she fell going down some steps and for right pelvic/hip pain due to arthritis. (Ex F-1:2) On March 14, 2012, she received treatment for pain in her right buttocks radiating down her right leg, but did not report a specific back injury. According to the prison records, Karla stated that the onset of this leg and back pain was several years ago, but recently for the last two weeks it became so severe she could not walk. Karla also reported ongoing pain in her left forearm and finger numbness from being electrocuted in August 2011 and that her right hip pain increased after that injury. A provisional diagnosis was lumbar radiculopathy. (Ex. F-3:4) On April 4, 2012, she was seen for low back and hip pain from slipping while climbing into her bunk. The record does not indicate which hip was involved. (Ex. F-5) While in prison, she worked cleaning restrooms and was not given any work restrictions for her health conditions.

After leaving prison, she was required to find a job and she began working for another temp agency and was assigned to work at Tyson Meats on the meat processing line. She was eventually hired by Tyson for full time production work. On December 4,

2012, Karla sought treatment from a Dr. Bahlmann for left side back and right hip pain along with numbness of fingers in the left hand. There again, is no office note from this doctor in evidence and the only evidence of this office visit comes again from Dr. Chen in his report. (Ex. B-3) On January 25, 2013, Karla called the Peoples Community Clinic to obtain medication for bilateral hip and back pain after long periods of standing while performing her Tyson job. (Ex. C-1) On February 26, 2013, Karla was seen by Rhonda Cue, N.P., at the Peoples Clinic for left arm pain and finger numbness. (Ex. 13-38) On March 2, 2013, she was treated at the Peoples Community Clinic for bilateral hip pain from her work at Tysons. (Ex. C-2) On March 18, 2013, Karla was seen by Andrea Hansen, PA-C and James Murphy, M.D., who released her to return to full duty work and provided information on chronic pain management, neuropathic pain, musculoskeletal pain, edema and back pain. Again there is no record of this treatment in evidence other than what is reported by Dr. Chen. (Ex. B-3) On March 21, 2013, Karla was seen by Cue, NP, for left arm pain from the shoulder, but mostly in the elbow. Karla told the doctor this is chronic pain since the electrocution injury. She also had numbness in her hand, thumb and finger. (Ex. 13-39)

In late March 2013, she was off work due to her pain. When she returned to work, she was fired after about four weeks for not informing Tyson in her employment application about her prior heath conditions or her prior work injury. (Ex. A-55:56, I-1:3) On April 30, Karla was treated for right rib and hip pain at the Peoples Clinic after falling while getting out of her sister's truck. (Ex. C-5)

On May 16, 2013, Karla was referred by defendants back to Dr. McMains. He had not seen her since September 9, 2011. The doctor reports that Karla was on Neurontin until her incarceration, and placed back on Neurontin by her primary care doctor when she was released. Karla reported that after leaving Tyson, she worked a few days as a motel maid, but was let go because she was not fast enough. She then unsuccessfully attempted to return to Tyson at another of its processing plants. Dr. McMains reports that Karla told him she cannot raise her left arm, but the doctor saw her moving it freely while she was in the waiting room. Karla also reported continued left forearm pain and finger numbness. She complained of pain on touch to the clavicle. Her pain level was reported 9/10. Dr. McMains recommended exercises to keep it loose and denied a back injury could occur from her electrocution injury. Given her past history of carpal tunnel syndrome (CTS) in her right wrist, the doctor said CTS would likely occur on the left. He stated that without reviewing any EMG/conduction studies at the time of her right wrist CTS, he would be unable to opine whether the electrocution injury was a cause of her hand and finger numbness. He ordered an EMG/conduction study of the left wrist. (Ex. E-7) In an addendum the next day, Dr. McMains reports that testing by a Dr. Tafish indicated CTS of the left hand. Dr. Tafish stated that he would not expect an electrical injury to cause CTS, but it could light up a pre-existing condition. The doctor then recommended a referral to an orthopedic surgeon to address the CTS. (Ex. E-8)

Karla was then evaluated on May 24, 2014 by Robert Bartelt, M.D., an orthopedist, who also diagnosed left CTS and recommended surgery. Defendant's

adjuster then asked the doctor whether the electrical injury on August 23, 2011 was the cause of the CTS. The doctor opined that while the CTS is not the direct result of the August 23, 2011 injury, the injury caused an aggravation of a pre-existing condition. (Ex. 14-43) Apparently, there was a delay in getting authorization from defendants for the surgery proposed by Dr. Bartelt because it was not performed until December 23, 2014. In a report dated January 23, 2015, Dr. Bartelt states that Karla was still having numbness and tingling after the surgery. The doctor added that Karla does not seem to be better or worse than before the surgery. He stated that she had very severe preoperative symptoms and he would expect a delayed or incomplete recovery of her nerve function. He placed Karla into physical therapy. There are no further reports from this doctor in evidence.

Karla continued treatment of her low back and hips with the Peoples Clinic and was seen on June 7, 2013 and February 6, 2014. In the February 2014 office note, Carrie Berry, NP, from that clinic reports that Karla continues to struggle with chronic pain, primarily in the low back radiating into both hips which started after the 1985 motor vehicle accident. Karla said she was doing exercises, but could no longer do so as a result of her pain. Karla told Berry her chronic pain was exacerbated a few days before when she ran from a dog while attempting to deliver phone books in a temp job. Karla stated that she was considering applying for disability. (Ex. C-6:7)

On July 1, 2013, at defendants' request, Karla was evaluated by Joseph Chen, M.D., a physiatrist and Clinical Associate Professor of Physical Medicine and Rehabilitation at the University of Iowa, College of Medicine. He is also associated with the University of Iowa Work Injury Recovery Center. In a report dated July 2, 2014 (referred to several times above), Dr. Chen opines that his diagnosis of Karla's condition is chronic left upper extremity pain. However, in his opinion, she did not suffer an electrocution injury, but a minor electrical contact injury at the time of the August 23, 2011 incident. He states that there is no evidence she sustained any soft tissue, deep burns or damage to her muscles or nerves. He states that such injuries are not likely to cause permanent damage. He opines that he is not convinced that Karla has a median neuropathy at the left wrist (CTS) because he had not had the opportunity to review the EMG/nerve conduction studies by Dr. Tafish. However, even if she had a median neuropathy, he could not attribute it to the electrical contact injury and there is no literature to indicate such neuropathies can be caused by an electrical contact injury. If she has CTS, the doctor states it is more likely due to her past repetitive clerical work. Dr. Chen also opines that Karla's back, hip and shoulder pain are not related to the electrical injury. While the pain diagram she completed on August 26, 2011 shows pain in these areas (not in evidence), the doctor states that it is more likely than not caused by factors unrelated to the electrical injury including her weight, level of physical activity or deconditioning and the development of pain behaviors. The doctor believes Karla is capable of full duty work given her prison work without restrictions and she requires no further medical treatment. In making this report, the doctor cites a medical article which indicates that patients who have multiple consultations follow low voltage electrical injury eventually were found to have no specific pathology. (Ex. B-5:6)

At the request of Karla's attorney, Marc Jeschke, M.D., Ph.D, was asked to provide opinions in this case from a records review. Dr. Jeschke is a professor of medicine at the University of Toronto, and senior surgeon/scientist in the division of plastic and reconstructive surgery, department of surgery and department of immunology. He is also the director of the Ross Tilley Burn Centre at the Sunnybrook Health Sciences Centre in Toronto, Canada. His curriculum vitae states that he has been treating burn patients and conducting research in the field of burns, including electrical injuries, for nearly 20 years. (Ex. 8)

In his report dated July 15, 2014, Dr. Jeschke states that he reviewed records from the post injury providers referred to above, but apparently none of the pre-injury records as his narrative only begins with the date of injury. Also, he did not personally examine Karla. He states in his report that he is familiar with the article cited by Dr. Chen which supposedly supports Dr. Chen's causation views. One of the co-authors was a former director of the Ross Tilley Burn Centre which he now heads. The doctor states that he has worked with both co-authors of that article. He disagrees with Dr. Chen's interpretation of the article. The doctor states that the article indicates that MRI or other testing will not reveal any significant damage to any nerve or in other words conventional testing fails to show morphological correlates. He states that he oversees all electrical injuries in the Province of Ontario and specializes in such injuries. In his experience with electrical injuries the correlation between objective tests and clinical problems are nearly non-existent. He states that it is impossible to diagnose major alterations from electrical injuries with conventional testing. (Ex. 15-49)

Dr. Jeschke opines that Karla's electrical injury and the subsequent alteration of her upper extremities are strongly correlated. He states there is a strong association between the electrical injury and her left hand, arm and shoulder problems. He states electrical injury patients usually have pain syndromes and chronic pain on an ongoing basis, even with low voltage injuries. He concludes that Karla's left hand, arm and shoulder problems are most likely associated with the electrical shock she endured at work on August 23, 2011. (Ex. 15-50:51)

However, Dr. Jeschke opines that although electrical injuries can cause problems in other parts of the body than the area subjected to the electrical injury, with the exact entry and exit are not defined in Karla's case and the existence of other causes such as degenerative conditions, no one can opine either way as to the role, if any, the electrical injury caused the back and leg symptoms. The doctor then states there is most likely a link between the electrical injury and the back and leg pain. The doctor adds that the electrical injury in this case is only a possible causal link and concludes "it could be a probability of causation. However, it is, but by no means, exclusive." (Ex. 15-51:52)

In a letter report dated September 9, 2014, Dr. Chen responded to Dr. Jenschke's views. He states that according to the EMG and nerve conduction studies in November 2013, Karla does not have a polyneuropathy that would be expected from an electrical injury. She was found to have a focal neuropathy of the median nerve in the left wrist. Such a neuropathy is common in the general population. He still is

unable to relate Karla's CTS to the August 2011 incident. In his experience treating patients it is not uncommon for patients with chronic pain in one area of the body to develop pain in other parts of the body. Also, he asserts that Karla underwent surgery for her ovarian cysts in September 2011, only a week after her injury, and the records of that procedure do not show any left upper extremity symptoms at that time. These records are not in evidence. Essentially, the doctor did not change any of his opinions. (Ex. B-7:8)

At the request of Karla's attorney, she was also evaluated by another physiatrist, Farid Manshadi, M.D. After his examination of Karla and a review of the medical records including the views of Dr. Chen and Dr. Jeschke, he has the following impressions:

1. Severe left carpal tunnel syndrome with reduced sensation and weakness;

2. Left shoulder rotator cuff impingement syndrome with reduced range of motion and pain; and,

3. Left-sided low back pain and hip pain with MRI findings of facet arthropathy being inflammatory at L3-L4 and degenerative disc disease at L4-L5 with spondylosis as well as degenerative facet arthropathy with possible stress reaction of the L5 vertebra, read by Dr. Halloran.

(Ex. 16-57)

Dr. Manshadi opines that all of these diagnoses are probably related to the electrocution injury of August 23, 2011. Although she had a pre-existing CTS in the left wrist, this condition was aggravated by the work injury. Also, the injury aggravated the pre-existing lumbar spondylosis and facet arthropathy. He found no evidence of any prior left shoulder injury. He likewise opined that the electrical injury aggravated the impingement syndrome in the left shoulder. He provided permanent partial impairment ratings under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

Dr. Manshadi found a 19 percent permanent partial impairment to the left upper extremity for the CTS and a 2 percent permeant partial impairment to the left upper extremity for a motor deficit. These ratings combine into a 21 percent permanent partial impairment to the upper extremity. For the left shoulder condition, the doctor found a 9 percent permanent partial impairment to the upper extremity. The total impairment to the upper extremity is 21 percent which converts to a 17 percent body as a whole impairment. Dr. Manshadi also gave a 5 percent rating for the back and left sided hip of 5 percent to the whole person. Therefore, the doctor's combined rating of impairment to the body as a whole for all of the conditions is 21 percent. (Ex. 16-58:59) Dr. Manshadi recommends permanent activity restrictions to avoid repetitious gripping activities with the left hand; repetitious pushing and pulling with the left hand and wrist; repetitive

reaching to shoulder height; and, overhead activities. Karla also is not to lift over 20 pounds with the left upper extremity. For the low back, Karla is to avoid repetitious bending. (Ex. 16-59)

At hearing, Karla described her current physical limitations. She is unable to stand for more than 5-10 minutes due to her back and hip problems and must sit or change positions to relieve her pain; she cannot sit for prolonged periods of time due to groin pain, and she cannot walk more than one block without sitting to rest. Karla testified that she cannot lift her grandchildren, cannot walk to grocery shop, cannot climb a lot of stairs, cannot kneel, and does not sleep very well due to her pain and anxiety. Karla believes she is unable to return to the kind of work she was doing for Staffing because she cannot climb ladders. She is unable to use her left arm in the same manner as before her work injury. However, Karla said that her social security application was denied, but is currently on appeal.

Karla testified that her medical problems from this work injury lead to her termination at Tyson after 30 days because she could not perform the work. She blames these medical problems for losing the housekeeping job at the motel, losing a ceramic mold cleaning job, and not being hired recently by a bar and grill. Although she has no formal restrictions, she has been rejecting referrals by her current temp agency, Labor Ready, after learning what the job entails, such production work and fast food counter work due to her standing problems. She states that she is continuing to apply only for clerical and data entry jobs, despite her education because more advanced work "is not her." Her longest employment was running a fairly successful child care business with her sister. However, she cannot return to that work because she lost her child care license due to a child endangerment conviction as a result of illegal possession of prescription medications. (Ex. A-17:19, J) She admits her criminal record adversely impacts her employment search, but she stated the extent of his is unknown, because so far she is not getting any interviews. Karla's attorney points out that Dr. McMains has never lifted his work restrictions.

I find that the work injury of August 23, 2011 is a cause of the carpal tunnel syndrome and repair surgery in the left wrist and the injury is limited to the left arm. I am unable to find that the work injury is a cause of her shoulder, bilateral hip and low back conditions. Except for the views of Dr. Chen, every other medical provider in this case causally relates the CTS to the work injury. The views of the treating orthopedist, Dr. Bartelt are more convincing than those of Dr. Chen, given his clinical and surgical experience with Karla and his specialized experience and knowledge of CTS conditions. Karla has had a consistent history of left forearm and hand/finger complaints since her injury.

Frankly, I am not impressed with either Dr. Chen or Dr. Jeschke. Both appear to base their causation views on what happens in the general population, rather than what has happened to Karla. Dr. Chen bases a lot of his views on a medical article that he misinterpreted. He also emphasized Karla's ability to do the prison work without restrictions, but is unaware of her inabilities to perform work at Tyson and other jobs

since leaving prison. Dr. Jeschke uses terms such as "association" and "correlation" that he does not explain. Possibly such terms are useful in scientific presentations, but of little value in determining legal causation issues with more explanation. Also, his views on causation of the back and hip/leg conditions are entirely confusing. He first states that he cannot opine on the cause of the problems, then opines there is a link and then said the injury "could be a probability of causation, but by no means exclusive." I can only guess what that statement means.

Dr. Manshadi is the only doctor to attribute all of the left sided conditions to the work injury.

Karla's complaints to her treating medical providers since the injury are conflicting and confusing concerning which hip was involved. The hip problems are not mentioned until she completed a pain diagram two days after the injury according to Dr. Chen. Although this may be important, this diagram was not placed in evidence. Even if it was, there is no explanation by Dr. Manshadi why he did not believe significant her failure to indicate such problems in later pain diagrams and histories before she entered prison. In prison, she attributes a worsening of her right hip problems to the electrical injury, rather than her left hip problems and readily admits to right hip arthritic problems since her 1985 motor vehicle accident. It was only after her prison stay that bilateral hip and back problems were her primary complaints. Specific low back complaints are non-existent in the evidence prior to going to prison. Dr. Chen indicates a doctor attributing low back problems to arthritis on November 1, 2011, but again that important record was not placed in evidence. Even if it were, there is no explanation provided in this record for a two month delay in reporting such back problems. Although she initially indicated shoulder pain at the time of her injury, she did not mention any shoulder pain again until March 2013, about a year and a half later despite several medical appointments during that time. She did not complain of any back problems while in prison attributable to the work injury in August 2011. Karla's conviction of a crime of dishonesty, adversely impacts her credibility in this case in determination of the extent of her injury.

I find that Karla's work related CTS and surgery results in permanent partial impairment that is limited to the left arm. This is based on Dr. Bartelt's views that due to the severity of her injury, he expected delayed or incomplete recovery of her nerve function. Dr. Manshadi is the only doctor to provide an impairment rating for the post-surgery CTS condition. He provided a 19 percent permanent partial impairment to the lower extremity due to sensory loss and continued pain. I do not believe that to be a true reflection of the loss of use of the arm in this case. Given her ongoing problems due to lingering CTS, I find that Karla has lost 25 percent of the use of her arm due to residual CTS and pain with activity.

I find that Karla was off work while receiving medical treatment due to her injury from August 23, 2011 until she entered prison on November 22, 2011. Dr. McMains' work restrictions kept her off work until she returned to some sort of work in prison. Possibly she would have a second period of healing period beginning with the date of

her CTS surgery in late 2014, but no doctor has opined when Karla reached maximum medical improvement after the surgery. Karla's attorney is not seeking healing period benefits after Karla entered prison likely due to Karla's return to employment after her release from prison.

CONCLUSIONS OF LAW

I. 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 treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Iowa Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133; 106 N.W.2d 95, 98 (1960).

Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the

employee is not entitled to compensation except as provided by statute. Soukup, 222 Iowa 272, 268 N.W. 598.

On the other hand, industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity. However, consideration must also be given to the injured workers' medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted; Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

I found in this case that the work injury of August 23, 2011 is limited to the left arm and is a cause of 25 percent permanent loss of use of that arm. Based such a finding, claimant is entitled 62.5 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(m), which is 25 percent of 250 weeks, the maximum allowable weeks of disability for an injury to an arm in that subsection.

Claimant's entitlement to permanent partial disability also entitles her to weekly benefits for healing period under Iowa Code section 85.34 for his absence from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work she was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first.

I found that claimant was off work for treatment of her work injury from August 23, 2011 to November 22, 2011 when she entered prison. This entitles her to healing period benefits from August 23, 2011 through November 21, 2011.

ORDER

1. Defendants shall pay to claimant sixty-two point five (62.5) weeks of permanent partial disability benefits at the stipulated rate of two hundred thirty-nine and 72/100 dollars ($239.72) per week from November 22, 2011.

2. Defendants shall pay to claimant healing period benefits from August 23, 2011 through November 21, 2011 at the stipulated rate of two hundred thirty-nine and 72/100 dollars ($239.72) per week.

3. Defendants shall pay accrued weekly benefits in a lump sum and shall receive credit against this award for weekly benefits previously paid.

4. Defendants shall pay interest on unpaid weekly benefits awarded herein pursuant to Iowa Code section 85.30.

5. Defendants shall pay the costs of this action pursuant to administrative rule 876 IAC 4.33, including reimbursement to claimant for any filing fee paid in this matter.

6. Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 27th day of May, 2015.

LARRY WALSHIRE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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