

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SEAN D. TRAINOR,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5064939

ARBITRATION DECISION

Headnotes: 1100, 1402.30

STATEMENT OF THE CASE

Claimant, Sean Trainor, filed a petition in arbitration for workers' compensation benefits against John Deere Davenport Works, a self-insured employer. The undersigned heard this case on July 8, 2019, in Davenport, Iowa.

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

The evidentiary record includes Joint Exhibits 1 through 15, Claimant's Exhibits 1 through 13, and Defendant's Exhibits D through H, J through Q, and S through T. Claimant testified on his own behalf. Brenda Trainor testified on claimant's behalf. Defendant called no witnesses. The evidentiary record closed at the conclusion of the arbitration hearing.

Counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties filed their post-hearing briefs on August 30, 2019, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury arising out of and in the course of employment on March 10, 2017;

2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits, if any;
3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, if any;
4. Whether the injury was the cause of temporary disability or healing period from April 16, 2018, through July 16, 2018;
5. The nature and extent of disability;
6. Whether claimant is entitled to an award of medical expenses; and
7. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Sean Trainor was born on June 3, 1969, making him 50 years old at the time of the evidentiary hearing. (Exhibit P, Deposition page 7). He and his wife live together in LeClaire, Iowa. (Hearing Transcript, page 14). Trainor received his High School Equivalency Certificate in approximately 1991. (Hr. Tr., p. 46). At the same time he was completing his GED, Trainor completed an accommodation welding course. He subsequently attended Black Hawk County Community College for blueprint reading. Trainor has worked as a welder or welding supervisor his entire career. (Ex. 10, pp. 30-31).

Trainor began working for John Deere Davenport Works as a welder on November 29, 2010. (See Ex. P, Deposition page 71). He was first assigned to work as a welder in the spin welding position. He worked in this position for approximately five years until he transitioned into the tack position. (See Hr. Tr., pp. 16-17). Claimant was operating as a welder in the front tack position on the date of injury. (Hr. Tr., p. 18).

Defendant disputes whether claimant actually injured his left shoulder at work on March 10, 2017. Defendant points to claimant's pre-existing history of left upper extremity and shoulder problems, as well as claimant's failure to report or describe a left shoulder injury until May 5, 2017, approximately two months after he reported the injury as an acute injury to the right small finger only.

As mentioned, claimant's medical history is relevant for pre-existing left shoulder issues.

Claimant presented to his primary care physician, Nataliya Kukhar, M.D., on September 12, 2011, with complaints of left shoulder pain since 2010. (JE10, p. 64). Dr. Kukhar assessed claimant with shoulder joint pain, prescribed Celebrex, and referred him on to physical therapy. (JE10, pp. 65-66).

A physical therapy record, dated September 26, 2011, describes a prior acute injury to claimant's left shoulder:

The patient is a 42-year-old male who presents today with chief complaint of left shoulder pain which began after patient was swinging a hammer, missed his target, and went to pull back on the hammer to avoid hitting himself in the shin. The patient reported a sharp pain at that time on top of his shoulder, along with radiation of pain down the lateral aspect of the arm to the elbow. The patient reports aggravating activities include holding his arm out to the side while reaching up behind his back.

(JE13, p. 97).

When claimant told Dr. Kukhar that physical therapy was making his pain worse, Dr. Kukhar recommended and administered a steroid injection to the left shoulder. (JE10, p. 71). Claimant was subsequently diagnosed with localized primary osteoarthritis of the left shoulder acromioclavicular joint. Claimant received a second steroid injection in February 2012. (JE10, pp. 73-74).

Claimant returned to Dr. Kukhar in October 2014 reporting similar complaints. (JE10, p. 76). Claimant signed off on an ORA Medical History form that indicated a "failure of shoulder," with pain and weakness in the left shoulder. (JE8, p. 38). Claimant estimated that his pain complaints began three years prior. (Id.).

Claimant presented to Courtney Kautz, D.C. of Kautz Chiropractic on January 4, 2017. He reported severe, radiating pain in the left arm and shoulder. Claimant reported a pain level of 9 out of 10. (JE5, p. 35).

One month prior to the March 10, 2017, date of injury, claimant presented to Dr. Kukhar, reporting left shoulder pain without a specific injury. (JE10, pp. 79-81). Dr. Kukhar diagnosed claimant with chronic left shoulder pain and ordered x-rays of claimant's left shoulder. (JE10, p. 81). At the time, claimant was reportedly taking Celebrex two times per day. (Hr. Tr., p. 20).

The February 13, 2017, x-rays revealed a mild, grade 1 separation left acromioclavicular joint with undersurface spurs of the clavicular head. The diagnostic report provides claimant had a several month history of left shoulder pain, laterally, with limited range of motion. (JE4, p. 34).

Claimant returned to Dr. Kukhar's office on February 22, 2017, for labs and a routine physical examination. (JE10, p. 82). Claimant's left shoulder pain is listed as a then-current concern. It is noted claimant's pain was improved with Celebrex. (Id.).

At hearing, claimant testified to experiencing issues in his left shoulder on March 9, 2017. (Hr. Tr., pp. 58-62). More specifically, he testified that toward the end of his workday, his left shoulder was persistently aching which was, "conducive of prior times to where it would trigger a cortisone injection." (Hr. Tr., pp. 60-61). He further testified

that during the days and weeks leading up to March 10, 2017, his left shoulder would ache towards the end of his shift, leading him to take his second dose of Celebrex. (Hr. Tr., pp. 61-62).

On the date of injury, Trainor was spot-welding a frame, prepping it for robotic welding. In the process, claimant rested his right hand on a steel plate. Unfortunately, the plate was not secured and it rotated, pinching claimant's small finger between the plate and the fixture. (Hr. Tr., pp. 22-24). This much is confirmed by the first report of injury. Defendant does not dispute the fact claimant sustained an injury to his right small finger. Defendant similarly does not dispute how the injury to the right small finger occurred. Defendant does, however, dispute the remainder of claimant's testimony regarding the injurious event. This is due, in part, to the fact claimant did not assert, or describe, an injury to his left shoulder occurred during the same injurious event on March 10, 2017, until May 3, 2017.

Claimant completed a second report of injury on May 3, 2017, providing he also sustained an injury to the left shoulder on the March 10, 2017, date of injury. (JE1, p. 1). According to claimant, after he pinched his right small finger between the fixture and plate, he reached out and put his left hand down to prevent himself from hitting the floor. He did not fall to the ground. (Hr. Tr., pp. 24-25). The alleged injury was unwitnessed. At the time of the fall, claimant had an impact gun in his left hand. Claimant asserts the impact gun was underneath his left hand when he made impact with the ground. (Ex. P, Depo. pp. 75-77). The impact gun was not damaged in the alleged fall. (Hr. Tr., p. 54).

Once his small finger was released, claimant walked to the company medical clinic. (Ex. P, Depo. p. 43). Claimant did not talk to anyone between the time of the incident and his arrival at the company medical clinic. (Ex. P, Depo. p. 44). Claimant first reported his injury to the company nurse. He did not report an injury to his left shoulder. Mike Perry, John Deere's safety manager, presented to the medical clinic and completed an injury report. (Ex. P, Depo. p. 44). Again, claimant did not report an injury to his left shoulder when speaking with Perry. Despite asserting that he tore his labrum and rotator cuff in his left shoulder during the March 10, 2017, work incident, claimant testified he was not experiencing any pain, aching, or discomfort in his left shoulder at the time of the injury or when he presented to the occupational health department. (Ex. P, Depo. pp. 42, 47-48).

Shortly thereafter, claimant walked Perry over to his work station to demonstrate how the injury occurred. Despite testifying that he was not experiencing left shoulder pain at the time, claimant asserts he then told Perry of his belief that he had tweaked his left shoulder. (Ex. P, Depo. pp. 49-50).

After demonstrating how the injury occurred, claimant returned to the front tack position and worked the remainder of his shift. (Ex. P, Depo. p. 50). Claimant continued to work full time, in a full-duty capacity, until March 31, 2017. (Ex. P, Depo. p. 53). Claimant was not reprimanded for any dip in his production levels between the date of injury and March 30, 2017. (Ex. P, Depo. p. 54).

Claimant testified he presented to Occupational Health approximately once per day to have the dressings on his small finger changed. (Hr. Tr., p. 29). He did not report a left shoulder injury or request treatment for his left shoulder at any of these daily visits. Additionally, claimant presented to defendant's occupational health department eight times between March 10, 2017, and April 1, 2017, for follow-up appointments. He did not report the alleged left shoulder injury to defendant's medical staff at any of the eight appointments. (See JE1, p. 1; JE3, p. 28).

Nevertheless, claimant asserts the pain in his left shoulder worsened between March 11, 2017, and March 30, 2017. When his symptoms did not improve, and Celebrex was no longer mitigating his complaints, claimant asked his wife to contact his primary care physician and schedule him for an injection. (Hr. Tr., p. 28).

Dr. Kukhar administered the requested cortisone injection to claimant's left shoulder on March 29, 2017. (JE10, p. 86). Typically, such an injection relieved claimant's symptoms within a few days; however, the March 29, 2017, injection only made his symptoms worse. (Hr. Tr., p. 29). Claimant was concerned Dr. Kukhar hit a nerve in the process of administering the injection. (See Hr. Tr., pp. 29-30).

When his symptoms did not improve, claimant presented to QCM Emergency on March 31, 2017. (JE9, p. 58). The medical staff at QCM referred claimant to ORA Orthopedics. (JE9, pp. 62-63).

Claimant presented to ORA Orthopedics for an initial consultation on April 3, 2017. Claimant did not assert or describe a specific injury to his left shoulder; rather, he reported a several month history of persistent left shoulder pain. (JE8, p. 45; see Ex. P, pp. 92, 101). Claimant's medical history form provides, "has x-rays fr. 2-13-17 he did not have any new injury since these x-rays just [an] inability to move arm after last cortisone injection." (Ex. P, p. 101). Dr. Berry concluded, "I think Sean is exhibiting some rotator cuff issues. It has been going on for several months now." (JE8, p. 46). Dr. Berry recommended claimant obtain an MR Arthrogram of the left shoulder. (JE8, pp. 45-46).

On April 5, 2017, claimant completed an application for weekly indemnity (WI) benefits for his left shoulder pain. The WI disability notice in evidence explains that indemnity benefits are for non-occupational illness or injury. (Ex. P, p. 88). Another section of the WI disability notice provides that if the disability is due to an accident, the recipient is to provide when, where, and how the accident occurred. Claimant did not provide an answer or response to this section. (Ex. P, p. 89).

An April 6, 2017, MR Arthrogram revealed superior and posterior tears of the glenoid labrum and degenerative changes of the AC joint. (JE11, p. 93).

Claimant presented to orthopedic surgeon Waqas Hussain, M.D., on April 14, 2017. There is no mention of a work-related injury or event in Dr. Hussain's medical record. Rather, the report provides claimant began experiencing left shoulder pain

several months prior. (JE8, p. 47). Dr. Hussain recommended surgical intervention to address claimant's concerns. (JE8, p. 48).

After receiving the results of the MR Arthrogram, claimant and his wife used WebMD to conduct research on labrum tears and common causes of the same. (Hr. Tr., p. 32). According to claimant, he and his wife learned that labrum tears commonly occur from falling forward and bracing oneself for impact with an arm or hand. (Hr. Tr., p. 32). After discovering this information, claimant and his wife attempted to discern how claimant's injury occurred. Claimant testified,

I asked my wife, and we sat down, and we rewinded, and my wife mentioned, well, didn't you say that you put your arm down when you pinched your finger, and it was – it was kind of an ah-ha moment, and I was like, yeah, that's got to be it, because it's the only thing that I had done. It's the only thing. All I do is sit around and play video games otherwise.

(Hr. Tr., pp. 32-33).

In his deposition, claimant conceded that he first reported the alleged left shoulder injury to defendant after discovering the results of the MR Arthrogram and researching causes of labral tears online. (Ex. P, Depo. p. 62). Claimant reported the alleged injury to defendant on May 3, 2017. (JE1, p. 1). He first described an acute injury to his left shoulder to his primary care physician on May 9, 2017. (See JE10, p. 87). Claimant testified he did not report the alleged left shoulder injury because he was under the impression his left shoulder pain was due to his long-standing, pre-existing arthritis. (See Hr. Tr., pp. 28, 33-34).

Dr. Hussain performed a left shoulder arthroscopy, rotator cuff debridement, open subpectoral tenodesis, anterior and posterior labral debridement and a subacromial bursectomy and decompression on May 10, 2017. (JE12, p. 94).

After surgery, claimant participated in physical therapy. The medical records reflect claimant consistently reported improvement in his left shoulder. (See JE8, pp. 50-51; JE2, p. 21). Claimant's September 18, 2017, medical record provides, "his arm is feeling really good [...] he did not have any pain over the weekend and did a lot of manual work for [approximately] 12 hours per day including overhead lifting." (See JE2, p. 21). He was discharged from physical therapy on October 11, 2017. (JE2, p. 24).

Dr. Allen's September 20, 2017, physical examination of claimant revealed full range of motion and normal strength in the left upper extremity. (JE3, p. 26). Drs. Allen and Hussain released claimant back to full-duty work on September 20, 2017. (JE8, pp. 55-56; JE3, p. 25).

Outside of independent medical examinations, claimant has not presented to any medical provider for treatment related to his left shoulder since September 20, 2017. (Ex. P, p. 83).

Defendant challenges claimant's credibility. More specifically, defendant asserts claimant's claim that he injured his left shoulder during the work incident on March 10, 2017, is not credible.

I do not necessarily reject claimant's testimony or find him incredible based upon the fact he did not initially describe an acute injury to the left shoulder on the date of injury. This agency has handled several cases where the injured worker did not immediately relate their injury or condition to work. That being said, there are many issues with claimant's testimony that do call his credibility regarding the injurious event into question.

It is certainly troubling claimant modified his initial report of injury and added previously undisclosed facts nearly two months after the March 10, 2017, work incident occurred. It is also concerning claimant did not independently remember extending his arm to catch himself from falling; rather, his wife had to refresh his memory when the two were attempting to determine what could have caused the tears in his shoulder. This leads me to believe claimant either did not extend his arm to catch himself from falling, or he exaggerated the force he used when placing his hand on the ground.

Claimant's reporting of the injurious event to his employer and medical providers in the days and weeks following the date of injury does not support a finding that the act of placing his left hand on the floor was a significant or memorable event.

Review of the medical records in evidence demonstrates that claimant presented to Drs. Kukhar, Berry, Hussain, and the medical staff at John Deere Health Clinic numerous times between March 10, 2017, the date of injury, and May 3, 2017, the date claimant reported the injury as work-related. Claimant did not report or describe an acute left shoulder injury to any of the above referenced medical providers. In fact, he specifically denied sustaining a new injury between February 13, 2017, and April 3, 2017. (JE8, p. 43).

Claimant was given numerous opportunities shortly after his injury to report an acute injury, a substantial increase in pain, or that he had forcefully placed his hand on the ground during the injurious event. He made no such reports.

The evidentiary record is void of evidence tending to show a significant increase in claimant's pain on or about March 10, 2017. In fact, claimant testified at hearing that the pain he was experiencing in his left shoulder between March 10, 2017, and April 3, 2017, was the same he had experienced before March 10, 2017. He further testified the pain was located in the same location and "conducive of prior instances where it would be time for another cortisone injection." (Ex. P, Depo. pp. 95, 58). Claimant testified there was nothing about his left shoulder pain that gave him any indication

there was something different going on in his left shoulder until May 3, 2017, when he learned of the tears in his left shoulder. (Ex. P, Depo. pp. 95-96).

Further, claimant testified he was not experiencing pain in his left shoulder at the time of injury, when he initially presented to occupational health, or when he described the injury to defendant's safety manager. (Ex. P, Depo. pp. 42, 47-48). Instead of seeking medical treatment, claimant returned to work and finished out his shift. (Ex. P, Depo. p. 50). He continued to work the front tack position without restrictions until March 31, 2017. (Ex. P, Depo. p. 53). Claimant's subsequent act of returning to his full duty position from March 10, 2017, to March 30, 2017, does not support a finding that claimant sustained an acute injury to the left shoulder on March 10, 2017. Lester Kelty, M.D., opined claimant would not have been able to continue working his job on a full-time, full duty basis had he torn his labrum and rotator cuff during the March 10, 2017, incident. (See Ex. D, pp. 11-12).

Claimant did not provide a terribly convincing explanation as to why he failed to mention his acute left shoulder injury to any medical provider before May 3, 2017. Claimant's testimony that he believed his condition was a continuation of his arthritis until he learned that he had torn his labrum does not support a finding that claimant sustained an acute injury on March 10, 2017. As noted above, claimant testified there was nothing about his left shoulder pain that gave him any indication there was something different going on in his left shoulder until he learned of the results of the MR arthrogram. (Ex. P, Depo. pp. 116-117). Claimant's beliefs did not change as a result of a memorable, significant injurious event or substantial increase in pain; rather, his beliefs changed following a new diagnosis.

In his post-hearing brief, claimant asserts the totality of the evidence leaves no question that his left shoulder condition significantly deteriorated following the March 10, 2017, work incident. I disagree. In January 2017, claimant reported pain levels at 9 out of 10 in his left shoulder. (JE5, p. 35). In February 2017, claimant reported a several month history of left shoulder pain with limited range of motion. (See JE10, pp. 79-81). Claimant's primary care physician subsequently recommended diagnostic imaging of the left shoulder. Claimant testified that in the days and weeks leading up to March 10, 2017, his left shoulder was persistently achy which was conducive of prior times where his shoulder would need a cortisone injection. (Ex. P, Depo. p. 58). Given this testimony, claimant's request for a cortisone injection from his primary care physician in late March 2017 appears to be more in line with what claimant believed to be a normal progression of his arthritic condition as opposed to an acute injury or a significant deterioration.

There is some evidence, albeit minimal, within this record that suggests claimant placed his hand on the ground during the injurious event on March 10, 2017. Claimant testified at deposition and at hearing that he showed an individual from the safety department how the injury occurred, including what he did with his left arm. (Hr. Tr., p. 27). Defendant did not obtain a witness statement or call Mr. Perry to rebut claimant's testimony in this regard. It is entirely possible claimant placed his hand on the ground

after pinching his finger between the plate and the fixture. It would be reasonable for an individual to plant his or her hand on an object or surface in such a scenario. Despite the above noted concerns regarding claimant's credibility, it remains possible that the incident occurred as claimant described and that claimant was injured as a result of the asserted injury. Given this possibility, this case ultimately comes down to medical causation.

Causation opinions were obtained from defendant's in-house occupational health physician, claimant's treating surgeon, and claimant's primary care physician.

Lester Kelty, M.D. served as defendant's in-house occupational health physician at the time of claimant's alleged injuries. On May 3, 2017, he opined, "I would think that if he had a new serious injury to his [left] shoulder he would have said something and would not be able to perform his regular work. I have requested his medical records." (Ex. D, pp. 11-12). After reviewing claimant's medical records, Dr. Kelty authored a follow-up opinion on June 28, 2017. He provided, "I do not think [claimant's] [left] shoulder pain and labral injury were due to his work at John Deere." (Ex. D, p. 13).

In a July 13, 2017, letter addressed to claimant's counsel, Dr. Hussain opined he was unable to provide an accurate opinion regarding causation. (Ex. J, pp. 32-33). Dr. Hussain's opinion was based on claimant's pre-existing complaints, a lack of a prior examination, and a lack of information pertaining to the arm position or height from which claimant fell. (Id.). Dr. Hussain further provided he would defer to an adequately trained occupational health physician who has an in-depth understanding of claimant's injury. (Id.).

On March 17, 2019, Dr. Hussain signed a pre-written opinion letter, providing he would defer to Dr. Kelty's opinion regarding whether claimant's alleged left shoulder injury is causally related to his work activities for the defendant employer. (Ex. O, pp. 61-62).

Dr. Kukhar initially opined, "I strongly believe that work injury was cause of my patient left labral tear and eventual shoulder surgery." (Ex. F, p. 16). Dr. Kukhar would later change her opinion after reviewing additional information.

In a February 4, 2019, letter, Dr. Kukhar provided that at the time of her June 7, 2017, opinion, she was not aware (1) claimant did not initially report an injury to the left shoulder when speaking to occupational health services or when filling out his injury report; (2) claimant did not report any left shoulder pain between March 14, 2017 and March 22, 2017; (3) claimant did not report a specific injury when filling out his application for WI; and (4) Dr. Hussain was unable to provide an accurate opinion on causation. Dr. Kukhar provided she was also unaware of claimant's initial medical records with ORA Orthopedics wherein claimant did not report a work-related injury to the left shoulder. (See Ex. N, pp. 55-57). Following her review of this information, Dr. Kukhar agreed to the following:

I cannot state to a reasonable degree of medical certainty that: 1) Mr. Trainor sustained a work injury on March 10, 2017; 2) that any such March 10, 2017 work injury caused or aggravated either Mr. Trainor's left shoulder pain or left shoulder labral tear; or 3) that any such March 10, 2017 work injury caused Mr. Trainor's subsequent left shoulder surgery.

(Ex. N, p. 57).

Claimant elected to obtain two independent medical examinations. Following his release from treatment, claimant presented for his first independent medical examination (IME) with Sunil Bansal, M.D. on December 1, 2017. Dr. Bansal causally related claimant's left shoulder condition and need for surgical intervention to the events that occurred on March 10, 2017. (Ex. 3, p. 18). Dr. Bansal opined that "the mechanism of jerking his left arm and falling on an outstretched hand is consistent with his rotator cuff and labral tears of his left shoulder." (Id.). He explained, "[...] the humeral head may move suddenly in relation to the rest of the shoulder joint, especially from the jerking motion and falling on an outstretched hand, causing an acute injury to the rotator cuff, labrum and attached muscles." (Id.). Dr. Bansal also noted that claimant experienced, "a lot of pain in his right small finger, as well as pain in his left shoulder" at the time of injury. (Ex. 3, p. 13).

I do not find Dr. Bansal's opinions on causation to be convincing. First, Dr. Bansal was operating under the mistaken belief that claimant had to jerk hard on the steel with his left arm to release his finger from the plate. (See Ex. 3, p. 13). Dr. Bansal provides, "He [...] had to push on the steel very hard with his left arm" and, "he had to jerk hard on the steel with his left arm to get his finger released." (Ex. 3, p. 13). Dr. Bansal's causation opinion states, "The mechanism of jerking his left arm and falling on an outstretched hand is consistent with his rotator cuff and labral tears of his left shoulder [...]. Consequently, the humeral head may move suddenly in relation to the rest of the shoulder joint, especially from the jerking motion [...]." (Ex. 3, p. 18). Said jerking motion is not described by claimant in any medical record. Moreover, claimant did not describe a jerking motion at hearing or in his deposition.

Second, Dr. Bansal's report does not address claimant's lack of immediate pain, his failure to initially report an acute injury to the left shoulder, or his ability to return to work in a full duty capacity – despite sustaining rotator cuff and labral tears – from March 10 to March 31. In fact, Dr. Bansal incorrectly provides claimant was experiencing pain in his left shoulder at the time of injury. (Ex. 3, p. 13).

Lastly, Dr. Bansal's opinion is based on an incomplete medical record. While Dr. Bansal did review the March 10, 2017, first report of injury, it does not appear as though Dr. Bansal reviewed the initial medical records from the John Deere Clinic, as the first record summarized is from May 3, 2017. (Ex. 3, p. 12). Further, while it was likely inconsequential to his ultimate opinion, Dr. Bansal authored his opinion with the understanding Dr. Kukhar strongly believed the work injury was the cause of claimant's left labral tear and need for surgery. (See Ex. 3, p. 10). As discussed above, Dr.

Kukhar later opined she could not find causation within a reasonable degree of medical certainty. Lastly, Dr. Bansal did not provide an updated IME report between December 2017 and the date of hearing.

Claimant presented for a second IME with Richard Kreiter, M.D. on May 29, 2019. (Ex. 1, p. 1). Like Dr. Bansal, Dr. Kreiter causally related claimant's left shoulder condition and need for surgical intervention to the alleged March 10, 2017, work injury. (Ex. 1, p. 1).

Dr. Kreiter's understanding of claimant's treatment following the date of injury is questionable. In his report, Dr. Kreiter provides, "Dr. Kukhar's next visit was after the date of injury, 3/10/2017, and Sean required an injection to quiet down the most recent traumatic event." (Ex. 1, p. 1). This oversimplifies the timeline of events and fails to account for claimant's ability to work full duty between March 10 and March 31, without issue. Further, Dr. Kreiter was under the mistaken belief that claimant reported, "at work injury, fell on outstretched left hand with re-injury to the left shoulder" to Dr. Kukhar when he presented to her office on March 29, 2017. (See Ex. 1, pp. 1; See also Ex. 1, p. 4). In reality, claimant did not report a work-related left shoulder injury to Dr. Kukhar until May 9, 2017. (See JE10, p. 87). Lastly, Dr. Kreiter does not address claimant's failure to report a left shoulder injury or left shoulder pain on the date of injury or at any point in time prior to May 3, 2017. For these reasons, I do not find Dr. Kreiter's causation opinion convincing.

Notably, claimant's treating surgeon and primary care physician both provided they could not opine within a reasonable degree of medical certainty that claimant's March 10, 2017, work incident caused or materially aggravated claimant's left shoulder condition. Neither physician was retained for the purposes of litigation. Dr. Kukhar's opinion is afforded significant weight on the issue of causation, as she has treated claimant's left shoulder condition since at least September 2011.

Dr. Hussain's opinion regarding causation is also afforded significant weight. Dr. Hussain's opinions did not change when challenged. He has consistently provided he could not provide an accurate opinion regarding causation of claimant's injury, findings, and symptoms. He further provided he would defer to an adequately trained occupational health physician who has an in-depth understanding of patient's injury. Claimant asserts Dr. Bansal, as opposed to Dr. Kelty, is the only credible occupational health physician in the record who provided an opinion on causation. As previously noted, I do not find the opinions of Dr. Bansal to be convincing on the subject of causation. I have little reason to question the credibility and competency of Dr. Kelty. Dr. Kelty was licensed in the state of Iowa on the date of injury and on all dates in which he provided treatment recommendations for claimant. (See Ex. T, pp. 119-121). Claimant did not follow-up with, or attempt to depose, Dr. Kelty to challenge his credibility prior to hearing. I find claimant provided insufficient evidence to diminish Dr. Kelty's credibility.

Dr. Kelty has worked at the on-site clinic at John Deere's Davenport plant. He, as well as his nurses and nurse practitioner, have provided treatment to claimant at the on-site clinic. (See Ex. D). Dr. Hussain provided that given two causation opinions, he would typically defer to the physician that would have the best understanding of the claimant's work, work demands, mechanism of injury, and most acute access to the claimant from a physical standpoint. This is a reasonable and logical opinion. I accept the opinions of Dr. Kelty insofar as they bolster the opinions of Drs. Hussain and Kukhar.

Considering the thoroughness of Dr. Hussain's causation opinion, Dr. Kelty and his staff's understanding of claimant's work, work demands, and access to claimant in the days and weeks following the March 10, 2017, work incident, and Dr. Kukhar's long-standing treatment and knowledge of claimant's left shoulder condition, I accept their opinions as most credible. I find their opinions to be more convincing than those of Drs. Bansal and Kreiter. Based on these opinions, I find there is insufficient evidence to causally relate claimant's left shoulder disability and need for medical treatment to the March 10, 2017, work incident. I find claimant has not proven that the left shoulder injury, the treatment he obtained on or after March 10, 2017, or any resulting disability, are causally related to, arose out of, or were materially aggravated or accelerated by the March 10, 2017, work incident. Having rendered this factual finding, all other disputed issues and factual issues are rendered moot.

CONCLUSIONS OF LAW

The initial disputed issue is whether claimant sustained a left shoulder injury arising out of and in the course of his employment on March 10, 2017.

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).

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).

In this case, I found the medical opinions of Drs. Hussain, Kukhar, and Kelty to be more persuasive and credible than the opinions offered by claimant's independent medical examiners. Having rejected the causation opinions of Dr. Bansal and Dr. Kreiter, and having found claimant's testimony regarding the events that occurred on the date of injury to be questionable, I ultimately found that claimant failed to prove he sustained a left shoulder injury that arose out of and in the course of his employment on March 10, 2017. Therefore, I conclude that claimant failed to prove by a preponderance of the evidence that he sustained an injury to the left shoulder that arose out of and in the course of his employment on March 10, 2017. I conclude that Mr. Trainor's claim for workers' compensation benefits against John Deere for the March 10, 2017, injury date fails. Claimant is not entitled to an award of either temporary or permanent disability benefits.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Because claimant was not successful in his claim, I decline to tax any costs to defendant.

All other disputed issues are rendered moot by the above findings of fact and conclusions of law.

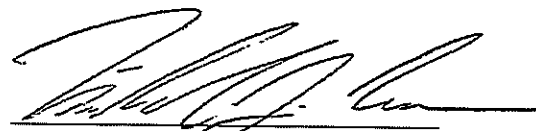
ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing.

Each party shall bear their own costs.

Signed and filed this 23rd day of January, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Kevin Halligan (via WCES)

Troy Howell (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 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.