BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DYLAN DUNLAP,

Claimant,

vs.

VARIED INDUSTRIES,

Employer,

and

GREAT WEST CASUALTY,

Insurance Carrier,
Defendants.

File No. 5051639

REVIEW-REOPENING

DECISION

Head Note Nos.: 1402.40, 1802, 1804, 2501, 2905, 2907

On January 26, 2015, the claimant, Dylan Dunlap, filed a petition in arbitration against the defendants, Varied Industries, and Great West Casualty ("Great West"), alleging he sustained an injury to his right shoulder while working for Varied Industries on July 23, 2013. Varied Industries and Great West filed an answer on February 23, 2015, denying Dunlap sustained a work injury. Dunlap filed an amended petition, alleging he sustained an injury to his right shoulder while working for Varied Industries on July 23, 2014.

An arbitration hearing was held on April 26, 2016. A deputy workers' compensation commissioner issued an arbitration decision on August 30, 2016, finding Dunlap had proven he sustained an injury to his shoulder arising out of and in the course of his employment with Varied Industries, concluding Dunlap was not entitled to temporary benefits during periods he refused suitable work, finding Dunlap's weekly rate is $311.92, granting Dunlap's request for alternate medical care with James Nepola, M.D., and assessing costs against Varied Industries and Great West. The decision was not appealed and became final agency action. The findings and conclusions contained in the arbitration decision are law of the case.

Dunlap filed a review-reopening petition in October 2016. The matter was dismissed without prejudice before the scheduled hearing.

On March 7, 2018, Dunlap filed a review-reopening petition against Varied Industries and Great West, alleging he sustained an injury to his right shoulder while working for Varied Industries on July 23, 2014. Varied Industries and Great West filed an answer admitting Dunlap had sustained a work injury.

On March 5, 2019, a hearing was held on the review-reopening action at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney James Ballard represented Dunlap. Dunlap appeared and testified. Attorney Stephen Spencer represented Varied Industries and Great West. Joint Exhibits ("JE") 1 through 7, and Exhibits 1 through 4, and A through F were admitted into the record. The record was held open through May 8, 2019, for the receipt of additional exhibits and post-hearing briefs. JE 8, a report from Keith Bengtson, M.D., and Exhibit E, a letter to Charles Mooney, M.D., and Exhibit F, Dr. Mooney's response, were received and admitted into the record. The briefs were also received, and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Varied Industries and Great West agreed to waive all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Dunlap and Varied Industries at the time of the alleged injury.

2. Dunlap sustained an injury on July 23, 2014, which arouse out of and in the course of his employment with Varied Industries.

3. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

4. The commencement date for permanent partial disability benefits, if any are awarded, is January 7, 2019.

5. At the time of the alleged injury Dunlap's gross earnings were $492.90 per week, he was single and entitled to one exemption, and the parties believe his weekly rate to be $311.92.

6. Prior to the hearing Dunlap was paid seven weeks of permanent partial disability benefits at the rate of $311.92 per week.

7. Costs have been paid.

ISSUES

1. Has Dunlap sustained a change of condition warranting an award of industrial benefits?

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

3. Is Dunlap entitled to temporary benefits from August 31, 2016 through September 12, 2016, and November 27, 2017 through January 6, 2019?

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

5. If the alleged injury is a cause of permanent disability, what is the extent of disability?

6. Has Dunlap proven he is permanently and totally disabled under the statute or under the common law odd-lot doctrine?

7. Is Dunlap entitled to recover medical expenses set forth in Exhibit 3?

8. Should costs be assessed against either party?

FINDINGS OF FACT

At the time of the review-reopening hearing Dunlap was twenty-eight and living in Rockford, Iowa with his grandmother. (Transcript, pages 6, 8) Dunlap is right-hand dominant. (Tr., p. 39)

Dunlap graduated from high school in Rockford, Iowa. (Arb. Dec., p. 2; Exhibit 2, p. 3; Tr., p. 36) Dunlap earned a C average in high school. (Tr., p. 36) After high school Dunlap attended community college for six months, but he did not graduate. (Arb. Dec., p. 2; Ex. 2, p. 3; Tr., p. 37) While attending community college Dunlap earned C and D grades. (Tr., pp. 37-38) Dunlap has not received any additional education. (Tr., p. 38) Dunlap has not received any training in computers, and he is not familiar with Microsoft Excel or PowerPoint. (Tr., p. 38) Dunlap testified he has used a computer to play videos on YouTube for entertainment, and e-mail. (Tr., pp. 38-39)

After dropping out of college Dunlap went to work for C & E Construction, as a flagger for road construction. (Tr., pp. 39-40) Dunlap stood on his feet for eight to ten hours per day as a flagger until he was promoted to ground pounder, operating heavy machinery. (Tr., p. 40) Dunlap testified he had to use both hands while working for C & E Construction because the machine he operated had multiple levers and switches, including a three-point hitch. (Tr., pp. 41-42) Dunlap worked for C & E Construction during the summer and he was not called back to work after the summer. (Tr., pp. 41-42)

Bob Engels Farm hired Dunlap as a general laborer where he took care of pigs. (Tr., p. 42) Dunlap was responsible for feeding and watering the hogs, vaccinating the hogs, and pulling and pushing dead finishing hogs weighing between 250 and 320 pounds each. (Tr., pp. 43-44) The farm had gates Dunlap had to move, and he had to scoop feed and manure. (Tr., pp. 43-45) Dunlap left Bob Engels Farm due to a pay dispute and Varied Industries hired him.

Varied Industries manufactures animal feed. (Arb. Dec., p. 2) In 2013, Dunlap began working at Varied Industries as a temporary employee for a temporary employment agency. (Arb. Dec., p. 2) Varied Industries later hired Dunlap as a full-time employee. (Arb. Dec., p. 2)

Dunlap initially worked for Varied Industries on an assembly line closing bags of feed, running the bags through a sewer or sealer, and stacking fifty to sixty pound bags

onto a palletizer. (Tr., p. 46) Dunlap testified he was promoted to second shift sub supervisor in the beginning of 2014. (Tr., p. 47) After his promotion Dunlap was also responsible for training new employees, ensuring the dryer was running correctly, and he was in charge of the mixer. (Tr., p. 47) Dunlap reported these additional duties required him to stand and walk more, and to sit, but he continued to lift bags of feed on a regular basis. (Tr., pp. 47-48)

On or about July 23, 2014, Dunlap was stacking forty-five to fifty pound bags of feed on pallets, by balancing each bag on his left hand and pushing the bag up on the stack while training a new employee. (Arb. Dec., p. 2) Dunlap put an additional five bags of feed on a stack that was approximately six feet tall. (Arb. Dec., p. 2) Dunlap indicated he threw the bags onto the stack similar to shooting a basketball or throwing a shot put. (Arb. Dec., p. 2) Dunlap testified that when he was stacking the bags he felt a pop in his right shoulder. (Arb. Dec., p. 2) Dunlap reported his work injury to his supervisor and he completed an injury report documenting he injured his right shoulder while loading bags of feed onto a pallet. (Arb. Dec., p. 2)

Dunlap received treatment with Howard Kim, M.D. (Arb. Dec., p. 3) Dr. Kim prescribed medication, ordered Dunlap to ice his shoulder, and imposed work restrictions. (Arb. Dec., p. 3) Dr. Kim ordered right shoulder magnetic resonance imaging, which showed a tear of the posterior glenoid labrum. (Arb. Dec., p. 3)

Dunlap attended an appointment with Eric Potthoff, M.D., an orthopedic surgeon in August 2014. (Arb. Dec., p. 3) Dr. Potthoff ordered physical therapy and imposed a lifting restriction of two pounds with the right upper extremity. (Arb. Dec., p. 3) Dunlap did not report a significant reduction in symptoms with conservative care, and reported he was unable to adhere to his restrictions at work. (Arb. Dec., p. 3) Dr. Potthoff restricted Dunlap from working. (Arb. Dec., p. 3)

On October 27, 2014, Dr. Potthoff performed a posterior labral repair and rotator cuff closure procedure on Dunlap. (Arb. Dec., p. 3) During a follow-up appointment on November 11, 2014, Dunlap complained of right shoulder pain and right arm pain. (Arb. Dec., p. 3) Dr. Potthoff released Dunlap to return to work with no use of the right arm. (Arb. Dec., p. 3) Dunlap returned to work and testified at hearing his position required him to use his right arm in violation of his restrictions. (Arb. Dec., p. 3)

Dunlap attended an appointment with Dr. Potthoff on December 16, 2014, and reported continued right shoulder pain. (Arb. Dec., p. 4) Dr. Potthoff imposed restrictions of no lifting, pushing, or pulling with the right hand. (Arb. Dec., p. 4)

Church & Dwight acquired Varied Industries. (Arb. Dec., p. 4) On December 8, 2014, Church & Dwight offered Dunlap a position on completion of the acquisition. (Arb. Dec., p. 4) Dunlap ended his employment with Varied Industries in December 2014, and testified he quit because he could not continue to work in a job that required him to use both arms. (Arb. Dec., p. 4) Great West sent a letter to Dunlap notifying him he had been offered continued employment and that his voluntary termination would result in a loss of benefits. (Arb. Dec., p. 4)

In January 2015, Dunlap slipped on the ice and reported he jerked his shoulder and aggravated his right shoulder pain. (Arb. Dec., p. 4) Dunlap relayed the pain was similar to the pain he had after surgery. (Arb. Dec., p. 4)

On February 10, 2015, Dunlap underwent right shoulder magnetic resonance imaging. (Arb. Dec., p. 4) The imaging showed a recurrent tear in the posterior glenoid labrum. (Arb. Dec., p. 4)

Dr. Potthoff opined Dunlap's original labral tear had never healed, and he recommended Dunlap be examined by another physician for a second opinion. (Arb. Dec., p. 4) Dr. Potthoff continued Dunlap's restrictions of no pushing, pulling, or lifting with the right hand. (Arb. Dec., p. 4)

Varied Industries and Great West referred Dunlap to Scott Neff, D.O., an orthopedic surgeon, for a second opinion. (Arb. Dec., p. 4) Dr. Neff issued a report on April 1, 2015, opining Dunlap's right shoulder condition was caused by the July 2014 work injury and he recommended a referral to a vascular expert and a shoulder surgeon, such as James Nepola, M.D., at the University of Iowa Hospitals and Clinics ("UIHC"). (Arb. Dec., p. 4)

Dunlap treated with additional providers, and underwent nerve conduction studies. (Arb. Dec., p. 5) Michael Lindstrom, D.O., again recommended Dunlap be examined by a specialist at the UIHC. (Arb. Dec., p. 5)

Dr. Nepola, an orthopedic surgeon with the UIHC, examined Dunlap on December 14, 2015. (Arb. Dec., p. 5) Dunlap reported he had constant right shoulder pain after surgery. (Arb. Dec., p. 5) In March 2016, Dr. Nepola ordered an injection into Dunlap's right glenohumeral joint. (Arb. Dec., p. 6) Dunlap reported increased pain with the injection. (Arb. Dec., p. 6) During a follow-up appointment on April 22, 2016, Dunlap underwent a second injection. (Arb. Dec., p. 6) Dunlap reported he received no pain relief from the injection. (Arb. Dec., p. 6)

Following the arbitration hearing, the deputy workers' compensation commissioner filed an arbitration decision on August 30, 2016, finding Dunlap had proven he sustained an injury to his shoulder arising out of and in the course of his employment with Varied Industries, concluding Dunlap was not entitled to temporary benefits during periods he refused suitable work, finding his weekly rate is $311.92, granting Dunlap's request for alternate medical care with Dr. Nepola, and assessing costs against Varied Industries and Great West. The decision was not appealed and became final agency action.

Dunlap continued to treat with Dr. Nepola, complaining of constant right shoulder pain. (JE 2, p. 9) On August 31, 2016, Dr. Nepola performed right shoulder revision surgery, an examination under anesthesia, and removed a loose posterior labrum suture and placed a labral suture. (JE 2, pp. 26-27) Dr. Nepola listed a post-operative diagnosis of limited shoulder range of motion and labral tear. (JE 2, p. 26) Dr. Nepola restricted Dunlap from working from August 31, 2016 through September 12, 2016, and the released Dunlap with temporary restrictions of no lifting, pushing, pulling, or

reaching with the right arm, and ordered Dunlap to keep his arm in a sling through October 10, 2016. (JE 2, pp. 28-30) Dunlap did not receive any weekly workers' compensation benefits while he was restricted from working. (Tr., p. 12)

Dunlap returned to Dr. Nepola on October 10, 2016, complaining of shoulder pain, and intermittent numbness in the fourth and fifth digits of his right hand. (JE 2, p. 31) Dr. Nepola ordered a physical therapy consult to begin active range of motion, and prescribed morphine, gabapentin, and Flexeril. (JE 2, p. 33) Dunlap testified his symptoms became worse after the surgery with Dr. Nepola. (Tr., pp. 12-13)

Dunlap returned to Dr. Nepola on November 1, 2016, following a visit to the emergency room for pain treatment. (JE 2, p. 36) Dunlap relayed physical therapy was very painful and he wanted to discontinue physical therapy. (JE 2, p. 37) Dr. Nepola stopped Dunlap's physical therapy for two weeks, ordered a TENS unit for his right shoulder pain, advised Dunlap to decrease his use of opioids, and continued his restrictions. (JE 2, pp. 37-38)

On November 29, 2016, Dunlap attended an appointment with Dr. Nepola reporting he did not receive any relief while he was not attending physical therapy, and noting he had not received a TENS unit for home use. (JE 2, p. 41) Dr. Nepola diagnosed Dunlap with August 31, 2016, right shoulder revision surgery, examination under anesthesia, removal of loose posterior labrum suture, placement of labral suture, right shoulder pain, unspecified chronicity, complex regional pain syndrome type 2 of the right upper extremity, and chronic right shoulder pain. (JE 2, pp. 42-43) Dr. Nepola recommended a magnetic resonance imaging arthrogram of the right shoulder and cervical spine magnetic resonance imaging, discontinued Dunlap's physical therapy, prescribed citalopram and morphine, and imposed restrictions of no lifting, pushing, or pulling with the right arm, and no repetitive reaching away from the body or above chest height. (JE 2, pp. 42-43)

During an appointment on February 26, 2017, Dunlap complained of severe constant aching, stabbing, pins, and needles, numbness and burning pain in his right shoulder and right neck, noting the sensations at the base of his skull were similar to a "brain freeze." (JE 2, p. 46) Dunlap reported his arm remained in the sling because it was too painful to move his shoulder. (JE 2, p. 46) Dunlap underwent a right shoulder magnetic resonance imaging arthrogram and cervical spine magnetic resonance imaging. (JE 2, pp. 47-49) Dr. Nepola reviewed the imaging and found the right shoulder imaging revealed no rotator cuff tear or labral tear and evidence of post-surgical changes, and the cervical spine imaging showed no significant degenerative changes. (JE 2, p. 49) Dr. Nepola discontinued Dunlap's gabapentin, prescribed Nucynta and a TENS unit for pain management, continued his restrictions and use of a sling for comfort, and recommended a consultation with the pain clinic for consideration of complex regional pain syndrome. (JE 2, p. 50)

Dr. Nepola referred Dunlap to Dana Simon, M.D., an anesthesiologist specializing in pain management in Des Moines. (JE 4) On March 22, 2017, Dunlap attended an appointment with Dr. Simon, complaining of ongoing right shoulder and arm pain. (JE 4, p. 63) Dr. Simon examined Dunlap, assessed him with complex regional

pain syndrome Type 1 of the right upper extremity, noted his left hand temperature was one degree centigrade higher than the right, ordered Dunlap continue Nucynta, and recommended a bone scan and consideration of a stellate ganglion block. (JE 4, pp. 63-66)

On April 12, 2017, Dunlap underwent a right stellate ganglion block. (JE 4, pp. 67-68) Dr. Simon assessed Dunlap with complex regional pain syndrome Type 2 of the upper extremity with unspecified laterality. (JE 4, p. 67) Dunlap returned to Dr. Simon on April 18, 2017, and reported the block did not help. (JE 4, p. 69) Dunlap relayed he had pain in his right shoulder and neck, mainly in the shoulder, and pain in his arm and hand that comes and goes, noting the top of his right arm beyond the elbow felt cold. (JE 4, p. 69) Dr. Simon assessed Dunlap with myositis of the right shoulder, and complex regional pain syndrome Type 2 of the upper extremity with unspecified laterality, noted "[m]ore apparent temperature discrepancies in hands noted today," recommended a bone scan, and administered trigger point injections. (JE 4, pp. 69-72)

On May 26, 2017, Dunlap underwent a right upper extremity arterial duplex with Jose Borromeo, M.D. (JE 5, p. 78) Dr. Borromeo listed an impression of normal right upper extremity arterial duplex. (JE 5, p. 78)

Dunlap attended a follow-up appointment with Dr. Simon on June 9, 2017. (JE 4, p. 73) Dr. Simon noted the temperature of Dunlap's right arm and hand was 31.7 degrees and the temperature of his left hand was 32.7 degrees, and noted Dunlap was holding his right shoulder with his left hand. (JE 4, p. 73) Dunlap reported the right stellate ganglion block provided no relief and the trigger point injections only provided relief for twenty minutes. (JE 4, p. 73) Dr. Simon assessed Dunlap with right shoulder pain, complex regional pain syndrome of the right upper extremity, myofascial pain, and neck pain, and noted Dunlap most likely has complex regional pain syndrome Type 2 of the right upper extremity "despite lack of over 1 degree temperature differential and no significant edema or swelling of the right arm or hand on measurement today. No erythema, No spongy edema. There is tingly sensation from tops of fingernails to the elbow of the right upper extremity." (JE 4, p. 73)

On July 3, 2017, Dr. Simon issued an opinion letter, recommending Dunlap continue taking Nucynta, and opined:

> [t]he patient may have CRPS Type I but without some otherwise classic findings on visits such as spongy or brawny edema, nailbed changes, fusiform or atrophic changes of the digits, marked hair distribution changes, hyperhidrosis. . . although there have been observed sensory aberrations on testing of the skin with possible dysesthetic responses to sensory stimulation of the right distal arm.

(JE 4, p. 76) Dr. Simon noted he discussed Dunlap's case with Dr. Joleen Smith who performed the stellate ganglion block. (JE 4, p. 76) Dr. Smith did not recommend a trial of cervical spinal cord stimulation and Dr. Simon concurred. (JE 4, p. 76) Dr. Simon recommended a referral for additional evaluation at the Mayo Clinic. (JE 4, p. 76)

Dunlap attended an appointment with Bassem Elhassan, M.D. with the Mayo Clinic on October 4, 2017. (JE 6, p. 79) Dr. Elhassan examined Dunlap and diagnosed him with right shoulder pain possibly secondary to suprascapular nerve entrapment and/or quadrilateral space syndrome, associated with posterior glenoid bone defect measuring at least twenty percent with posterior microinstability and associated with biceps tendinitis, and Dunlap underwent an ultrasound-guided right suprascapular nerve block injection. (JE 6, pp. 79-84) Dunlap reported some symptom relief, but not full relief from the injection. (JE 6, p. 85)

On November 27, 2017, Dr. Elhassan performed a right arthroscopic subscapular nerve release, debridement of recurrent pan labral tear, and biceps tenotomy in subpectoral tenodesis of the biceps tendon. (JE 6, p. 87) Dr. Elhassan listed a post-operative diagnosis of right shoulder pain secondary to recurrent labral tear, biceps tendinitis, and suprascapular nerve entrapment. (JE 6, p. 87) Following surgery Dunlap continued to complain of pain, Dr. Elhassan ordered a consult with the Mayo Clinic Pain Service, and he restricted Dunlap from working from the date of surgery for six weeks following surgery. (JE 6, pp. 89-94) Dunlap did not receive any weekly workers' compensation benefits while he was restricted from working. (Tr., p. 18) Dunlap testified his symptoms became worse after the surgery. (Tr., p. 21)

On January 11, 2018, Dunlap attended a follow-up appointment with Dr. Elhassan. (JE 6, p. 95) Dunlap reported he was still experiencing pain and using a sling. (JE 6, p. 95) Dr. Elhassan directed Dunlap to discard his sling and start active-assisted range of motion and aqua therapy with no stretching or strengthening, and recommended pain management with the Mayo Clinic Pain Service. (JE 6, p. 95)

Dunlap attended a Mayo Clinic Pain Service consult with John Tranchida, M.D., on February 7, 2018. (JE 6, p. 99) Dr. Tranchida examined Dunlap, listed an impression of chronic post-traumatic right upper extremity pain, not relieved by numerous surgical interventions, anxiety, and depression. (JE 6, pp. 99-103) Dr. Tranchida recommended a wellness consultation for consideration of pain rehabilitation which Dunlap declined, nortriptyline, a stellate ganglion block, and opined he did not believe Dunlap was a candidate for spinal cord stimulation. (JE 6, pp. 102-04) Dr. Elhassan also examined Dunlap that day and ordered Dunlap to discard his sling, and start active-assisted range of motion and aqua therapy with no stretching or strengthening. (JE 6, p. 105)

On March 14, 2018, Dunlap returned to Dr. Elhassan complaining of pain in his right shoulder and not being able to move his shoulder much. (JE 6, p. 106) Dr. Elhassan noted he could not really examine Dunlap's strength because of his pain, and noted he is very sensitive around the shoulder. (JE 6, p. 16) Dr. Elhassan diagnosed Dunlap with a history of a labral tear managed with biceps tenotomy and tenodesis and debridement of the glenohumeral joint chondral wear, and ongoing significant pain of the shoulder mostly secondary to residual reflex sympathetic dystrophy. (JE 6, p. 106)

Dunlap underwent a wellness assessment consultation with Susan Bee, APRN with the Mayo Clinic, on March 14, 2018. (JE 6, p. 107) Bee discussed using cognitive behavioral strategies with Dunlap to manage his thoughts, behaviors, and mood related

to chronic pain, moderation of activity, daily exercise, and relaxation strategies with breathing and mindfulness. (JE 6, pp. 109-10)

On April 25, 2018, Dunlap underwent a bone scan at the Mayo Clinic to evaluate for complex regional pain syndrome. (JE 6, p. 115) Jolanta Durski, M.D., reviewed the scan, and listed an impression of "[n]ormal blood flow images. Slightly asymmetric blood pool over the left carpometacarpal area is nonspecific. On delayed images there is mild diffuse increased uptake throughout the right shoulder joint and proximal humerus, which could be a result of recent surgeries. Symmetric uptake in the joints of both hands without evidence of CRPS." (JE 6, p. 115)

Dunlap also underwent right upper extremity magnetic resonance imaging at the Mayo Clinic. (JE 6, p. 116) The reviewing radiologist found Dunlap had diffuse mild glenohumeral chondromalacia, no full-thickness chondral defects, his glenoid humeral ligaments, rotator cuff interval structures, and rotator cuff musculature was intact, the AC joint was negative, and the remainder of the imaging was unremarkable. (JE 6, p. 116)

On June 18, 2018, Dunlap underwent another bone scan and right shoulder magnetic resonance imaging at the Mayo Clinic. (JE 6, pp. 117-18) The report of the bone scan lists an impression of no clear bone scan evidence of complex regional pain syndrome in the right upper limb. (JE 6, p. 117) The report from the magnetic resonance imaging lists an impression of no significant change since the previous study and no evidence of a rotator cuff tear. (JE 6, p. 118)

On June 19, 2018, Dunlap attended an orthopedic consultation with Keith Bengtson, M.D. with the Mayo Clinic, a physiatrist who also completed a surgical internship after graduating from medical school. (JE 6, p. 119) Dr. Bengtson examined Dunlap, and noted:

> [o]n exam today he is reluctant to move his shoulder either passively or actively but does have full active range of motion of his elbow, forearm, wrist, and fingers albeit with some slight stiffness. He tolerates light touch quite well but has altered sensation to light touch from the firth right finger tips up to the shoulder and then in the swath over the upper trapezius to the neck and face even above the level of the eye all on the right side. He has no altered sensation to light touch in the chest wall area or in the parascapular area. The upper arm is quite erythematous and has an altered contour that appears to be swollen. He does have some shiny skin in the lateral aspect of the right upper arm. Distal to the elbow he has mottled appearance to the skin. The right hand is cooler to touch than the left. Hydration is symmetric. I do not appreciate any changes in hair growth or nail growth.

(JE 6, p. 119) Dr. Bengtson listed an impression of right shoulder and upper extremity neuropathic pain that meets the criteria for complex regional pain syndrome, noting Dunlap fulfilled the Budapest criteria having symptoms in all four categories and displaying signs on clinical examination and two of the four quick categories per

specifically sensory changes and vasomotor changes with his edema and color changes. (JE 6, p. 119) For a definitive diagnosis, Dr. Bengtson recommended a QSART and a thermal regulatory sweat test. (JE 6, p. 119) Dr. Bengtson prescribed baclofen and Effexor. (JE 6, p. 119)

Dunlap testified at some point Dr. Elhassan had discussed performing a fourth surgery to address a twenty to twenty-five percent bone loss in his shoulder joint with a bone graft. (Tr., p. 21) Ultimately Dr. Elhassan and Dr. Bengtson agreed Dunlap should not undergo a fourth surgery. (Tr., p. 22)

Dunlap underwent a sweat test on July 19, 2018. (JE 6, pp. 121-22) Dr. Bengtson reviewed the testing and found the thermal regulatory sweat test failed to show any areas of hidrosis, but noted "it does not distinguish between low and high levels of sweating." (JE 6, p. 123) Dr. Bengtson noted the QSART differentiates between high and low levels of sweating and Dunlap "has increased levels of sweating on right forearm compared with the left." (JE 6, p. 123) Dr. Bengtson listed a diagnosis of right upper extremity complex regional pain syndrome, noted Effexor had been ineffective, Dunlap might benefit from a standard stellate ganglion block, and Dunlap might be a candidate for a spinal cord stimulator. (JE 6, p. 123) Dr. Bengtson restricted Dunlap from working from June 19, 2018 through June 19, 2019, and imposed restrictions of rare climbing or above ground work, no lifting with the right upper extremity, no reaching with the right upper extremity, no use of the right upper extremity, rare bending, stooping, and squatting, and no use of power equipment. (JE 6, pp. 124-25)

Dunlap underwent a right stellate ganglion block on August 13, 2018. (JE 6, pp. 126-27) During a follow-up appointment on August 30, 2018, Dunlap reported he received substantial, but not complete relief of his pain for approximately four days, and during that time he was able to use his right hand and move his shoulder up to 90 degrees of flexion and abduction, and then he returned to his baseline. (JE 6, p. 128) Dr. Bengtson listed an impression of right upper extremity complex regional pain syndrome, and recommended another stellate ganglion block with an evaluation for a possible spinal cord stimulator. (JE 6, p. 128)

On October 8, 2018, Dunlap underwent a second right stellate ganglion block. (JE 6, pp. 129-32) Dunlap returned to Dr. Bengtson on October 22, 2018, reporting he received three to four days of good partial relief of his symptoms, but he again returned to his baseline. (JE 6, p. 133) Dr. Bengtson recommended a referral to a pain medicine specialist for consideration of whether he is a candidate for a spinal cord stimulator and the possibility of medical cannabis in Iowa with a neurologist. (JE 6, p. 133)

On November 29, 2018, Dr. Bengtson responded to an August 7, 2018 letter from Dunlap's counsel, diagnosing Dunlap with right upper extremity complex regional pain syndrome. (Ex. 1, p. 1) Dr. Bengtson noted based on Dunlap's history the symptoms came on suddenly after his work injury, and he opined there was a direct correlation between the injury and his current condition. (Ex. 1, p. 1) Dr. Bengtson found Dunlap had not reached maximum medical improvement because he was waiting to see if Dunlap would be a candidate for a spinal cord stimulator. (Ex. 1, p. 1) Dr.

Bengtson opined at that time Dunlap was unable to use his right upper extremity in a productive manner in an employment situation. (Ex. 1, p. 1)

Dunlap attended an appointment with Christine Hunt, M.D., a pain medicine specialist with the Mayo Clinic, on January 7, 2019, for ongoing pain related to right upper limb chronic regional pain syndrome. (JE 6, p. 134) On exam, Dr. Hunt noted Dunlap's right arm was positioned in a sling, which she removed, and after approximately five minutes she appreciated "color changes including mottling of the skin compared to the left." (JE 6, p. 135) Dunlap reported he believed his complex regional pain syndrome had moved into right ribs. (JE 6, pp. 134-36) Dr. Hunt opined she agreed with the diagnosis of complex regional pain syndrome, and she believed Dunlap is not a candidate for a spinal cord stimulator. (JE 6, p. 136) Dr. Hunt recommended no additional stellate ganglion block or injection procedures, noted Dr. Elhassan has opined Dunlap is not a candidate for additional surgery at this time, and she opined Dunlap would be a good candidate for the pain rehabilitation center program. (JE 6, p. 136) Later that day Dunlap attended an appointment with Dr. Bengtson. (JE 6, p. 137) Dr. Bengtson noted Dunlap was not a candidate for a spinal cord stimulator trial, and his next option was to consider medical cannabis from a physician licensed in Iowa. (JE 6, p. 137) Dr. Bengtson placed Dunlap at maximum medical improvement on January 7, 2019. (JE 6, p. 137)

Charles Mooney, M.D., an occupational medicine physician, conducted an independent medical examination for Varied Industries and Great West on February 22, 2019. (JE 7) Dr. Mooney reviewed Dunlap's medical records and examined him. (JE 7) On examination, Dr. Mooney found:

> [h]e demonstrates very mild edema to the right hand compared to the left and loss of fine wrinkling is noted. He does not have any nail changes. He does have more sparse hair on the right forearm compared to the left. He does not demonstrate any stiffness with motion in the right hand or with flexion, extension or radial or ulnar deviation of the wrist. Mild stiffness is noted in the elbow and significant guarding is noted in the right shoulder. His best grip strength is 5 kg on the right, compared to 44 kg on the left. He demonstrates weak pinch grasp but does not demonstrate any intrinsic muscular wasting in the right hand. He is able to spread his digits and has a negative Finkelstein's test and negative Froment's. He complains of increased sensation to pinprick over the forearm and upper arm. He demonstrates inconsistent widening of two-point discrimination on the right hand, which is 6-8 mm in the small and ring finger and 7-10 mm in the middle finger, 6 mm in the index finger and thumb. He does not demonstrate a positive Tinel's test at the carpal tunnel, however testing does complain of pain.

(JE 7, p. 144) Dr. Mooney opined Dunlap "does not appear to have any significant alteration in skin temperature, but he does demonstrate skin mottling on the right hand compared to the left." (JE 7, p. 144)

Dr. Mooney assessed Dunlap with "[m]edical record evidence of right shoulder injury resulting in labral tear, multiple surgeries including suprascapular nerve release with ongoing symptoms of neuropathic pain most consistent with CRPS with other reasonable diagnoses excluded." (JE 7, p. 144) Dr. Mooney found Dunlap had reached maximum medical improvement, he treated with various medications for depression "with little overall improvement," and during his medical exam "he endorses multiple mental health symptoms," which Dr. Mooney found "may be a confounding factor, [but do] not exclude the diagnosis of CRPS." (JE 7, p. 144) Dr. Mooney found the medical record supported a causal relationship between the July 2014 work injury and Dunlap's labral tear and complex regional pain syndrome. (JE 7, p. 145)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Mooney opined:

> [i]t is my opinion that although he would not meet all criteria according to the Fifth Edition Guide (Table 16-16) that CRPS is evident and is rateable. This is discussed in the Medical-Legal Companion to the AMA Guide Fifth Edition finding the following, page 298.
>
> "Although there are objective diagnostic criteria for CRPS listed in Table 16-16 Page 496, these are intended to distinguish CRPS from other chronic pain conditions that are rated in Chapter 18, a subjective complaint of pain is the hallmark of CRPS, not objective findings, and many of the associated physical and radiographic findings are nonspecific and non-diagnostic. The differential diagnosis, i.e., the other possible causes of the symptoms is extensive and includes, but is not limited to somatoform disorders, factitious disorder, (such as Munchausen syndrome and malingering)."
>
> Table 16-16 lists clinical and radiographic findings associated with CRPS. At least eight of these findings must be present at examination to make a diagnosis of CRPS, according to the Guides. However, according to the Master [of] the AMA Guides, page 250, these criteria, as indicated in the nervous system chapter are not seen in all individuals with CRPS. . . they are a guide and should not be construed as the definitive definition of CRPS. The text in Chapter 13 discusses many of the same criteria listed in table 16-16, such as distal extremity swelling, skin that may be smooth, mottled, cold, sweaty, shiny or thin; altered nail and hair growth, osteoporosis, restriction of passive movement, posture or action tremor, patchy demineralization on x-ray, and altered blood flow. However, chapter 13 does not require a set number of criteria to make a diagnosis of CRPS.
>
> It is my opinion that it is appropriate to rate Mr. Dunlap according to those criteria found on Page 343 of the Fifth Edition Guide under Table 13-22, criteria for rating impairment related to chronic pain in one upper extremity.

It is my opinion that class II impairment is evident and would place him in the higher end of the category of impairment, providing a 20% whole person impairment related to chronic regional pain syndrome.

Additional impairments are combined with the range of motion loss of the shoulder and elbow which are as follows:

8% impairment due to loss of shoulder flexion

6% impairment due to loss of shoulder abduction

2% impairment due to loss of shoulder extension

1% impairment due to loss of external rotation

3% impairment due to loss of internal rotation

2% impairment due to loss of right elbow extension

Subsequently this provides a total impairment of 21% of the upper extremity which is then converted to whole person (13%) and combined with the CRPS rating of 20%

Total whole person impairment is 30%.

No rating is provided for sensory deficit due to the inconsistencies found on examination and allodynia is rated in the CRPS rating. No motor weakness impairment is applicable.

(JE 7, pp. 145-46) Dr. Mooney found Dunlap's current functional use of his right arm is significantly limited, noting "the right hand could be used for light assist such as holding small objects or operating a cell phone as he has described. It is my opinion that it is appropriate to limit his maximum lift to 2 pounds and that he is able to perform light activity assist with the right hand while using utilizing [*sic*] a sling." (JE 7, p. 146) Dr. Mooney further opined while Dunlap may regain some functional recovery, "he is unable to perform activities requiring any significant finger dexterity." (JE 7, p. 146) Dr. Mooney agreed any further treatment should be limited to addressing psychological issues related to chronic pain, a trial of cannabinoids may be reasonable, but there is no proven benefit in complex regional pain syndrome, and noted Dunlap may benefit from participation in a chronic pain group and individual pain psychological counseling to provide insight into managing his symptoms. (JE 7, p. 146)

On March 5, 2019, Dr. Bengtson issued an opinion letter to Dunlap's counsel finding Dunlap reached maximum medical improvement on January 7, 2019. (JE 8) Using the AMA Guides, Dr. Bengtson opined:

[i]n his case, because of the diagnosis of CRPS (which is referred to as "RSD" in these Guides), the rating is appropriately determined using Table 13-22. Please see the discussion on pages 343-344 in regards to these

> criteria. Mr. Dunlap has severe difficulty using his dominant right hand for any activities of daily living including self-care. As such, I have labeled him as Class 3 which allows for subjective rating between 25% and 34%. I have rated him at 32%.
>
> At the time of publication of these Guides, the terms "causalgia" and "RSD" were accepted diagnostic terms. Currently, however, they have been replaced with the term "CRPS" which is the updated term for the patient's condition.

(JE 8)

Pursuant to a request from counsel for Varied Industries and Great West, Dr. Mooney issued a letter, as follows:

> [y]ou have requested my opinion related to Mr. Dunlap's testimony during the trial that he testified that he had a 25% bone loss in his shoulder. In my review of the medical records I did not see any evidence of a bone densitometry test that would support this statement. Further, Mr. Dunlap did undergo two bone scans, the first of which was positive for findings consistent with CRPS. The second however was negative and would also not support significant bone loss or CRPS in his right upper extremity.
>
> You have related that Mr. Dunlap sat through his trial wearing his winter coat and his right arm in a sling underneath. He testified that it was because his arm was extremely cold. On the other hand, he testified he was sweating profusely and that his shirt was wet. Mr. Dunlap testified that his arm was very cold on the outside whereas it is hot on the inside. You have asked whether or not such a phenomenon is non-physiologic. Individuals with CRPS can have autonomic dysfunction and dysesthesias consistent with feeling of hot and cold. I did review the Mayo Clinic records noting that they had requested a sweat test on Mr. Dunlop [*sic*] but did not I [*sic*] see the results until provided by you on 04/02/19. The Thermoregulatory skin test (TST) was performed on 07/18/18 and was read as normal.
>
> Further, an autonomic reflex screen test was also normal. Both of these tests are utilized to demonstrate autonomic dysfunction and a [*sic*] support a diagnosis of CRPS, and in Mr. Dunlap's case they do not provide objectively positive findings. Individuals with CRPS can have abnormal sweating, but Mr. Dunlap's claims during testimony would be considered non-physiologic, based on the test findings.
>
> You have related that Mr. Dunlap testified that he was able to recreationally use a computer. It is my opinion that if he can recreationally use a computer (which would not be inconsistent with light activity of the right hand) that he could have vocational training that would allow him to further advance this ability and utilize a computer for work activities.

> You have related that in my previous report of 02/22/19, I suggested that Mr. Dunlap had very limited use of his right upper extremity. You now ask if I believe he can use his upper extremity more than he depicts or presents. In my experience with CRPS patients, most recover much more function and do not have as significant long-term functional loss as Mr. Dunlap claims. It is evident in the medical records, specifically in the evaluation by Dr. Hunt that there was evidence of psychological overlay and that this may be influencing his symptoms and claims of dysfunction. It is my opinion that I concur that psychological overlay does create significant difficulty in measurement of his functional abilities.
>
> You further relate that Mr. Dunlap's depiction or presentation as being absolutely unable to use his right upper extremity may be inconsistent with patients in CRPS and also request my opinion as to whether or not Mr. Dunlap's failure to depict any abilities at all with his right upper extremity, prevents physicians including myself in accurately assessing his functional abilities. In my opinion Mr. Dunlap [*sic*] complaints and functional loss is at the extreme of individuals with CRPS, that do not have objective findings (i.e. atrophy, positive bone scans, abnormal sweat testing). Again, I feel that it is significant that at least one of his evaluating physicians has recognized that there is significant psychological overlay as it relates to his symptoms and claimed loss of use. In my opinion psychological influences greatly impact any ability to perform functional testing in Mr. Dunlap's case.
>
> You have asked that if my experience in treating CRPS patients, if CRPS patients tend to get better over time and not worse. It is my experience that CRPS patients usually improve significantly with diligent rehabilitation efforts, although may not completely resolve all symptoms. Based on my experience in treating similar patients, it is my opinion that Mr. Dunlap's claimed inability to use his right arm is poorly substantiated although his diagnosis cannot reasonably be challenged.

(Ex. F)

During the hearing Dunlap was wearing a sling on his right upper extremity. (Tr., p. 50) Dunlap reported he has worn the sling since mid-2018. (Tr., p. 50) Dunlap testified he has complex regional pain syndrome in his right upper extremity to his neck, and it has spread to his right ribs. (Tr., pp. 24-25) Dunlap does not wear a seatbelt over his right extremity when traveling in a car because his right arm and ribs hurt. (Tr., p. 51)

Dunlap reported he feels like there are pins and needles shooting from his shoulder down to his right fingertips, and he reported he has a "terrible sensation right now in my rear shoulder that flows down to my fingers, almost like a constriction, like a boa constrictor is on it right now." (Tr., p. 53) Dunlap relayed he has sharp pain in his right torso that "almost takes your breath away. Like, it's hard to breathe." (Tr., p. 53)

At hearing Dunlap testified there is a three to five degree difference in temperature between his right arm and his left arm. (Tr., p. 25) No physician has recorded a difference of three to five degrees between Dunlap's right and left upper extremities.

Before his work injury Dunlap enjoyed hunting, fishing, bowling, and playing basketball on occasion. (Tr., pp. 49-50) Dunlap reported he cannot engage in any of these activities anymore. (Tr., p. 50)

Dunlap cares for his son who will be three in April 2019. (Tr., pp. 50, 55) Dunlap reported "I don't get to be the dad that I want to be," noting he cannot teach his son how to play sports or ride a bike. (Tr., pp. 55-56)

Dunlap is right-hand dominant and cannot eat with his right hand. Dunlap testified he trained himself to eat with his left hand, but he cannot cut any meat or other food. (Tr., p. 56) Dunlap reported he does not like to rely on other people and often picks up his food and eats with his hands because it is easier. (Tr., p. 56)

Dunlap testified he has good use of his left arm and reported he only uses his right arm when he is in the shower. (Tr., p. 58) Dunlap is able to drive, and drove two hours to his attorney's office, in preparation for the hearing. (Tr., pp. 59-60) He also drove himself to the UIHC, Des Moines, and the Mayo Clinic for treatment. (Tr., p. 60)

At the time of the review-reopening hearing Dunlap has living with his grandmother. (Tr., p. 60) Dunlap moved in with his grandmother in January 2019. (Tr., p. 61) Before he moved in with his grandmother Dunlap was living with Krista Hall, his fiancée and the mother of his child. (Tr., p. 61) Hall is the assistant manager at the Hy-Vee in Charles City. (Tr., p. 61) Hall supported Dunlap financially, and he took care of their son when they lived together. (Tr., pp. 61-62) Dunlap's mother also helped Dunlap take care of his son. (Tr., p. 62) Dunlap testified Hall kicked him out of their home because he was not getting better and she told him that he was worthless. (Tr., p. 68)

Dunlap testified he could not perform his duties for Varied Industries with one hand. (Tr., p. 46) Dunlap reported his positions with Bob Engels Farm and Varied Industries required him to stand for extended periods of time, and required him to bend and twist on a regular basis more than five percent per day. (Tr., pp. 46-47)

Dunlap has not applied for employment since the original arbitration hearing. (Ex. A, p. 1; Tr., p. 48) Dunlap applied for Social Security Disability Insurance benefits and his application was denied. (Ex. A, p. 2) Dunlap testified in February 2019, he spoke with an individual with Iowa Vocational Rehabilitation Services and he had an appointment scheduled for March 12, 2019. (Tr., p. 49) Dunlap reported Varied Industries and Great West had not offered him any vocational rehabilitation services. (Tr., p. 49)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including change of condition, temporary benefits and refusal of suitable work, extent of disability, recovery of medical bills, and interest under Iowa Code sections 85.33, 85.34, 86.14, and 535.3. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.33 and 85.34 apply to injuries occurring on or after the effective date of the Act. These cases involve work injuries occurring before July 1, 2017, therefore, the changes to Iowa Code sections 85.33 and 85.34 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

II. Change of Condition

Iowa Code section 86.14 governs review-reopening proceedings. When considering a review-reopening petition, the inquiry "shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded." Iowa Code § 86.14(2). The deputy workers' compensation commissioner does not re-determine the condition of the employee adjudicated by the former award. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391 (Iowa 2009). The deputy workers' compensation commissioner must determine "the condition of the employee, which is found to exist subsequent to the date of the award being reviewed." Id. (quoting Stice v. Consol. Ind. Coal Co., 228 Iowa 1031, 1038, 291 N.W. 452, 456 (1940)). In a review-reopening proceeding, the deputy workers' compensation commissioner should not reevaluate the claimant's level of physical impairment or earning capacity "if all of the facts and circumstances were known or knowable at the time of the original action." Id. at 393.

The claimant bears the burden of proving, by a preponderance of the evidence that, "subsequent to the date of the award under review, he or she has suffered an *impairment or lessening of earning capacity proximately caused by the original injury.*" Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999) (emphasis in original).

During the original hearing Dunlap had not been placed at maximum medical improvement for his right shoulder condition. Following the hearing he underwent two

additional right shoulder surgeries, and he was diagnosed with complex regional pain syndrome.

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

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

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

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

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the

compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

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

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

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

After original arbitration hearing Dunlap underwent two additional right shoulder surgeries with Dr. Nepola at the UIHC and Dr. Elhassan at the Mayo Clinic. Following the hearing he was also diagnosed with complex regional pain syndrome.

Dr. Bengtson, a treating physiatrist with the Mayo Clinic, and Dr. Mooney, an occupational medicine physician who conducted an independent medical examination for Varied Industries and Great West, provided opinions on causation and permanency. Both physicians agree Dunlap has complex regional pain syndrome caused by his work injury. Dr. Mooney assigned whole person impairments of thirteen percent for the shoulder condition, and twenty percent for complex regional pain syndrome, for a total of thirty percent, and Dr. Bengtson assigned a thirty-two percent permanent impairment for complex regional pain syndrome. Dunlap has established he sustained permanent impairments to his right shoulder and complex regional pain syndrome caused by the work injury. Dunlap has met his burden of proof he sustained a change of condition following the April 2016 arbitration hearing.

III. Temporary Disability Benefits

Dunlap seeks healing period benefits entitled from August 31, 2016, following the second surgery with Dr. Nepola, through September 12, 2016, and from November 27, 2017, following the third surgery with Dr. Elhassan, through January 6, 2019. Varied Industries and Great West contend Dunlap is not entitled to benefits for this period based on the finding in the August 2016 arbitration decision that he refused suitable work.

Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition. Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005).

The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556. Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018). If Dunlap is entitled to temporary benefits, he is entitled to healing period benefits because he has sustained a permanent impairment.

Under Iowa Code section 85.18, "[n]o contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided." Iowa Code section 85.33(3) provides:

> [i]f an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

Thus, the statute precludes an employee who refuses suitable work offered by the employer, consistent with the employee's disability, from receiving temporary or healing period benefits during the period of refusal. Id.; Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 520 (Iowa 2012). The employer bears the burden of providing the affirmative defense. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 559 (Iowa 2010).

The issue of whether an employer has offered suitable work is ordinarily an issue for the trier of fact. Neal, 814 N.W.2d at 518. The Iowa Supreme Court has held under the express wording of the statute, the offered work must be "'suitable' and 'consistent with the employee's disability' before the employee's refusal to accept such work will disqualify [the employee] from receiving temporary partial, temporary total, and healing period benefits." Id. at 519.

In the August 2016 arbitration decision, the deputy workers' compensation commissioner found Dunlap refused suitable work and denied his request for temporary benefits. After the original arbitration hearing, Dunlap's situation changed. Dr. Nepola found Dunlap needed additional surgery, he performed surgery on Dunlap on August 31, 2016, and he restricted Dunlap from working until through September 12, 2016. There is no evidence the defendants offered Dunlap suitable work that he refused after August 31, 2016. Dunlap is entitled to healing period benefits from August 31, 2016, through September 12, 2016.

Dunlap was also restricted from working by Dr. Elhassan at the time of his surgery on November 27, 2017. No evidence was presented at hearing the defendants offered Dunlap suitable work that he refused from November 27, 2017, through January 6, 2019, or that he was capable of returning to employment substantially similar to the employment in which he was engaged at the time of the injury. Dunlap is entitled to healing period benefits from August 31, 2016 through September 12, 2016, and November 27, 2017 through January 6, 2019, at the stipulated rate of $311.92 per week.

IV. Extent of Disability

As discussed above, I found Dunlap has established he sustained a change of condition, therefore, it is necessary to consider the extent of his disability. "Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa

Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Dunlap alleges he is permanently and totally disabled under the statute and common law odd-lot doctrine. Varied Industries and Great West reject his assertion, and assert he failed to plead the odd-lot doctrine in his petition.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674 N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant's medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Walmart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacities would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633.

Dr. Mooney assigned a twenty percent permanent impairment rating for complex regional pain syndrome, finding Dunlap had sustained a Class 2 impairment. (JE 7, p. 146) Dr. Bengtson assigned a thirty-two percent permanent impairment, finding Dunlap had sustained a Class 3 impairment based on the "severe difficulty [Dunlap has] using his dominant right hand for any activities of daily living including self-care." (JE 8) I find the opinion of Dr. Bengtson on extent of disability with respect to complex regional pain syndrome to be the most persuasive. Dr. Mooney's opinion assigning a thirteen percent whole person impairment to the right upper extremity is unrebutted.

The AMA Guides distinguish a Class 2 impairment from a Class 3 impairment for chronic pain. Under a Class 2, the "[i]ndividual can use the involved extremity for self-care and can grasp and hold objects with difficulty, but has no digital dexterity." AMA Guides p. 343. Under a Class 3, the "[i]ndividual can use the involved extremity but has difficulty with self-care activities." AMA Guides, p. 343. The evidence presented at hearing establishes Dunlap has very limited use of his right upper extremity. Dunlap cannot cut meat or food, and he had to teach himself to eat with his left hand.

I find the opinion of Dr. Bengtson most persuasive on extent and permanent restrictions. Dr. Mooney examined Dunlap one time for purposes of an independent medical examination. Dr. Bengtson treated Dunlap over a period of time. Dr. Bengtson has superior training to Dr. Mooney. Dr. Bengtson is a physiatrist who also completed a

surgical internship following medical school. He also practices at a premier medical institution, the Mayo Clinic.

Dr. Bengtson also opined Dunlap was unable to use his right upper extremity in a productive manner in an employment situation. (Ex. 1, p. 1) He has never modified his opinion.

At the time of the review-reopening hearing Dunlap was twenty-eight. (Tr., p. 8) Dunlap is a young man with limited education and work experience.

Dunlap graduated from high school with a C average and he attended community college for six months, earning C and D grades. (Tr., pp. 36-38) Dunlap has not received any additional training. (Tr., p. 38) He is able to use a computer to play videos on YouTube for entertainment and to check his e-mail. (Tr., pp. 38-39) Dunlap has no formal experience using computer software such as Microsoft Excel or PowerPoint. (Tr., p. 38)

Dunlap has worked as a laborer in the past. He has no experience working in an office setting or performing sedentary work. Dunlap has worked as a road construction flagger and heavy equipment operator, general laborer on a farm, and laborer and supervisor for Varied Industries. Dunlap's prior positions required the use of both upper extremities. His positions with Varied Industries and Bob Engels Farm required Dunlap to lift well over the two pounds Dr. Mooney believes he is capable of lifting. Dunlap is not capable of returning to similar employment he has held in the past.

Dunlap has not looked for work since his work injury. Shortly before the hearing he scheduled an appointment with Iowa Vocational Rehabilitation Services. I do not find Dunlap is motivated to work. Varied Industries and Great West did not offer Dunlap any vocational rehabilitation services prior to hearing. Neither party requested a vocational opinion from a vocational expert. Considering all of the factors of industrial disability, I find Dunlap is permanently and totally disabled under the statute, on the stipulated commencement date of January 7, 2019, at the stipulated rate of $311.92 per week.

V. Medical Bills

Dunlap requests Varied Industries and Great West be responsible for a $6,418.62 Medicaid lien for treatment he received at the UIHC and physical therapy. (Ex. 3) Dunlap testified at hearing the physical therapy charges are for physical therapy Dr. Nepola referred him to, and the bills are for an emergency room visit when his arm was purple. (Tr., pp. 54-55)

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to

treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Based on the evidence presented at hearing, I find the treatment provided to Dunlap described above was reasonable and beneficial to Dunlap. Brewer-Strong v. HNI Corp. 913 N.W.2d 235 (Iowa 2018); Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206. Varied Industries and Great West are responsible for the medical bills set forth in Exhibit 3, and for all causally related medical care.

VI. Costs

Dunlap seeks to recover $100.00 for the filing fee, $6.57 for the cost of service, and $150.00 for Dr. Bengtson's November 29, 2018 report. (Ex. 4) Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

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

The administrative rule expressly allows for the recovery of the costs requested by Nolan. Using my discretion, I find Dunlap is entitled to recover the cost of the $100.00 filing fee, $6.57 cost for service, and $150.00 cost of Dr. Bengtson's November 29, 2018 report.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant intermittent healing period benefits from August 31, 2016 through September 12, 2016, and November 27, 2017 through

January 6, 2019, at the stipulated rate of three hundred eleven and 92/100 dollars ($311.92) per week.

Defendants shall pay the claimant permanent total disability benefits from the stipulated commencement date of January 7, 2019, at the stipulated rate of three hundred eleven and 92/100 dollars ($311.92) per week, and into the future during the period of the claimant's continued disability.

Defendants are entitled to a credit for all benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendants are responsible for the medical bills set forth in Exhibit 3, and for all causally related medical care.

Defendants shall reimburse the claimant one hundred and 00/100 dollars ($100.00) for the filing fee, six and 57/100 dollars ($6.57) for the cost of service, and one hundred fifty and 00/100 dollars ($150.00) for the cost of Dr. Bengtson's November 329, 2018 report.

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

Signed and filed this 7th day of June, 2019.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

James M. Ballard
Attorney at Law
14225 University Ave., Ste. 142
Waukee, IA 50263-1699
jballard@jmbfirm.com

Stephen W. Spencer
Attorney at Law
6800 Lake Dr., Ste. 125
West Des Moines, IA 50266-2504
steve.spencer@peddicord-law.com

HLP/srs

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