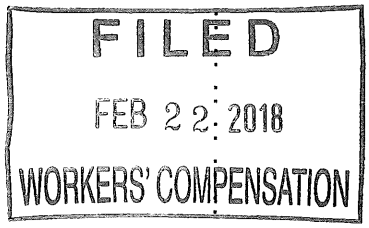
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CAROLINA DIAZ, Claimant, vs. TYSON FOODS, INC., Employer, Self-Insured, Defendant.		File No. 5054658 ARBITRATION DECISION Head Note No.: 1803

STATEMENT OF THE CASE

Carolina Diaz, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Foods, Inc. (Tyson) as a result of an injury she sustained on March 12, 2014 that arose out of and in the course of her employment. This case was heard in Des Moines, Iowa, and fully submitted on August 1, 2018. The evidence in this case consists of the testimony of claimant, Joint Exhibits (JE) 1 – 18 and Claimant's Exhibits 1 and 2. Both parties submitted briefs. The hearing was interpreted.

ISSUES

1. Whether the alleged injury is a cause of permanent disability and, if so;
2. Whether the alleged disability is a scheduled member disability or an unscheduled disability.
3. The extent of claimant's disability.
4. Assessment of costs.

STIPULATIONS

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

The issue of payment for an independent medical examination was initially identified as a disputed issue. Defendant notified the undersigned and claimant that it had paid this cost and now payment for an independent medical examination is not a disputed issue.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Carolina Diaz, claimant, was 42 years old at the time of the hearing. Claimant was born in Mexico and her primary language is Spanish. Claimant completed the 6th grade of school in Mexico. She has no additional formal education. Claimant worked packing carrots and in a plant tending a machine that printed labels. (JE 14, p. 7) Claimant worked for a Temp agency about three years cleaning places. (JE 17. p. 7) Claimant has worked in a number of packing houses. Her first work in Iowa was at a packing plant in Ottumwa, Iowa for about eight months in 2009. (Transcript page 14)

Claimant began her employment with Tyson in January 2010. Before she worked for Tyson she took a physical, which she passed. (Tr. p. 15) Claimant was discharged by Tyson for attendance issues on September 24, 2014. (JE 15, p. 3) At the time of her discharge she was making $13.75 per hour. (JE. 17, p. 4) Claimant started working for HON/Allsteel in July 2015. (Tr. p. 38) Claimant does assembly and packaging as a Work Cell Operator. Claimant testified that she does not lift more than 20/25 pounds in this position, but the job description requires the ability to lift 40 pounds. (Tr. p. 39: JE 17, p. 8) Claimant was earning $12.75 per hour at HON/Allsteel. (Tr. p. 40) Claimant has not informed HON/Allsteel that she has any restrictions. (Tr. 55)

Claimant worked the ham line for about a year and one-half. Claimant would trim excess fat from pieces of meat weighing 30/35 pounds. (Tr. p. 16) Claimant would use a knife in her right hand and throw meat with her left. Claimant would throw pieces of meat up to a conveyer line that was about at her forehead level. (Tr. p. 21) Claimant also worked a Cryovac machine packing loins as of March 29, 2013. (Tr. p. 45) A report of injury of March 12, 2014, which claimant filled out, stated that on March 12, 2014 she was putting loins on the line and carried trays of meat that caused her pain. (JE 13, p. 1)

On January 5, 2012, claimant went to the emergency department of Trinity Hospital for right shoulder pain. (JE 1, p. 1; Tr. p. 23) Claimant reported to the hospital that she had pain for the last month and one-half and claimant attributed her pain to work. (JE 1, p. 2) The assessment was "Left shoulder pain probably impingement syndrome." (JE 1, p. 3) Claimant saw Nazee Sarvenaz Jabbari, M.D., the next day for her shoulder pain. Dr. Jabbari returned claimant to work with restrictions and a referral to the onsite work physician. (JE 2, p. 3)

Claimant saw the onsite physician, Gregory Clem, M.D., on January 12, 2012 who assessed claimant with left shoulder strain. (JE 3, p. 1) Dr. Clem, on May 31, 2012, found that claimant's left shoulder strain had resolved. (JE 3, p. 2)

On February 3, 2014, claimant was seen by Tuvi Mendel, M.D., for an evaluation of bilateral shoulder pain. (JE 5, p. 1; Tr. p. 25) Dr. Mendel's assessment was:

> ASSESSMENT: Bilateral shoulders diffuse overuse with rotator cuff irritability and scapulothoracic musculoskeletal irritability.

(JE 5, p. 2) Dr. Mendel provided an injection of the left and right shoulder that day. (JE 5, p. 2) On March 14, 2014, Jennifer Tyler, PA-C noted that an MRI of the left shoulder was essentially normal and assessed claimant with left scapulothoracic and neck pain. (JE. 5, p. 5; JE. 6, p. 2)

On March 20, 2014, claimant was seen by Dr. Clem for pain over the periscapular pain. Dr. Clem's assessment was "Left scapulothoracic and neck pain." (Ex. 7, p. 1) Dr. Clem continued claimant on light duty. (JE 7, p. 2) On April 4, 2014, claimant reported a 50 percent improvement in her pain. (JE 7, p. 3) On May 1, 2014, Dr. Clem noted claimant said she was 90 percent better. He started her on a two-week work hardening program and found her to be at maximum medical improvement with no disability rating. (JE 7, pp. 5, 6)

Robert Milas, M.D., performed a one-time examination of the claimant on May 19, 2016. Dr. Milas wrote the, "The patient relates a history of several injuries to her cervical region, where she was struck by a piece of meat as well as injuries to both shoulders." (JE 9, p. 1) Dr. Milas' impression was cervical radiculopathy, probably secondary to a herniated cervical disk at the C5-C6 level. (JE 9, p. 1) Dr. Milas provided an 18 percent whole body impairment rating and recommended a 10-pound lifting restriction. He suggested an MRI of the cervical spine. Dr. Milas wrote, "I do feel that the repetitive nature of her work as well as the numerous injuries sustained by this patient are the direct cause of her condition of ill-being and are directly related to her work related activities." (JE 9, p. 2)

Dr. Milas was deposed for this case. Dr. Milas repeated that claimant was struck by a piece of meat. (JE 18, pp. 3, 6) He did not know claimant was operating a Cryovac machine at the time of her injury. (JE 18, p. 4) Dr. Milas testified that claimant had cervical radiculopathy, secondary to a herniated cervical disk at C5-C6. (JE 18, p. 4) Claimant testified she was not hit by a piece of meat. (Tr. p. 21)

Joseph Chen, M.D., of the University of Iowa Department of Orthopedics and Rehabilitation Clinics performed an independent medical examination (IME) on April 7, 2017. Dr. Chen reported cervical spine range of motion in full with extension. He noted

pain in occiput with full flexion and pain in extremes of range of motion. (JE 10, p. 3) Dr. Chen was unable to relate a causal connection between her current diagnosis and the alleged injury of March 12, 2014 or with her work with the Cyrovac. (JE 10, p. 4) He provided a zero rating and provided no restrictions. (JE. 10, pp. 4, 5)

On April 19, 2016, Richard Kreiter, M.D., performed an IME. Concerning her cervical and upper extremity complaints his diagnosis was,

> A) Cervical disc disease with possible radiculopathy; no MRI done. B) Left shoulder pain with degenerative AC joint and impingement of the rotator cuff. C) Possible bilateral carpal tunnel with entrapment of the median nerve. D) Rule out ulnar nerve entrapment of the left elbow, with mild grip strength weakness. E) Deconditioned upper thoracic and scapular myositis/bursitis, with associated tension headaches.

(JE 11, p. 1) Dr. Kreiter noted claimant did not have a cervical MRI and recommended claimant be evaluated at the University of Iowa Orthopedic Department. (JE 11, p. 1) The only reference Dr. Krieter made in his report concerning causation of the cervical and shoulder issues was, "I am concerned that knee surgery prior to full evaluation of the upper extremities and neck may only aggravate the work-related issues." (JE 11, p. 1)

RATIONAL AND CONCLUSIONS OF LAW

The defendant has admitted claimant had an injury that arose out of and in the course of her employment with Tyson. Defendant denies that she has a permanent impairment due to this injury.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001);

Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994)

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

In this case there are two opinions that directly address causation of claimant's current cervical and shoulder impairment. Dr. Milas opined that claimant's work caused her cervical symptoms. While he noted claimant had a number of work injuries he also relied upon claimant being hit by a piece of meat as part of the causation of her injury. Dr. Milas did not have a clear idea of the work claimant was performing at the time of the March 12, 2014 injury. I do not find Dr. Milas' opinion on causation convincing as it is based, in part, on inaccurate and incomplete information.

As noted above Dr. Krieter did not specifically address causation. I am unable to find his opinions convincing.

Dr. Chen had more accurate information from the claimant and the records. I find his opinion more convincing in this case. He was unable to find that claimant had a permanent impairment due to the March 12, 2014 injury.

I find that claimant has failed to carry her burden of proof. The claimant takes nothing further.

ORDER

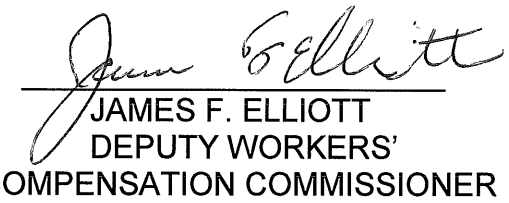
THEREFORE, IT IS ORDERED:

Claimant takes nothing.

Costs are not assessed to either party.

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

Signed and filed this 22nd day of February, 2018.



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