

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER DAVIS,

Claimant,

vs.

JOHN DEERE DAVENPORT WORKS,

Employer,
Self-Insured,
Defendant.

File No. 20700989.01

ARBITRATION DECISION

Head Note No: 1100

STATEMENT OF THE CASE

Claimant, Christopher Davis, filed a petition in arbitration seeking workers' compensation benefits from John Deere Davenport Works, self-insured employer, as defendant, as a result of an alleged injury sustained on April 13, 2020. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on September 21, 2021, via internet-based videoconferencing, using CourtCall. The record in this case consists of joint exhibits 1 through 5, claimant's exhibits 1 through 7, defendant's exhibits A through N¹, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on October 27, 2021.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury arising out of and in the course of his employment on April 13, 2020;
2. Whether claimant's claim is barred for failure to give timely notice under Iowa Code section 85.23;
3. Whether claimant's claim is barred as an untimely claim under Iowa Code section 85.26;

¹ Defendant was extended the option to submit the deposition of Nathaniel Marxen post-hearing. By email correspondence dated September 22, 2021, defendant's counsel declined the offer to submit the additional evidence.

4. Whether the alleged injury is a cause of temporary disability and, if so, the extent;
5. Whether the alleged injury is a cause of permanent disability and, if so, the extent;
6. Whether defendant is responsible for medical expenses claimed in Claimant's Exhibit 6;
7. Whether claimant is entitled to reimbursement for an independent medical examination pursuant to Iowa Code section 85.39; and
8. Specific taxation of costs as identified in Claimant's Exhibit 7.

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.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his deposition testimony. Claimant's demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 32 years of age at the time of hearing. He graduated high school and subsequently completed some college-level general education coursework, but did not obtain a degree. In 2010, he successfully obtained a MIG welding certification. (Claimant's testimony) Claimant began work at defendant in December 2010. Claimant has remained employed as a CNC/robotic welder since that time; however, he has been assigned to different departments over that period. (Claimant's testimony; CE1, p. 1)

While working welding and grinding frontend loaders, claimant began to experience some symptoms of carpal tunnel syndrome in his right hand and wrist. (Claimant's testimony)

On April 1, 2015, claimant presented to UnityPoint Health and was evaluated by Latha Balamuniswamy, M.D, who noted complaints of right hand pain with some occasional numbness and tingling. Dr. Balamuniswamy noted no specific injury, but commented that claimant had been a welder for 4.5 years and performed repetitive work. On examination of the right wrist, Dr. Balamuniswamy found full range of motion,

no swelling, no ecchymosis, no ganglion, and no paresthesia during the visit. Dr. Balamuniswamy diagnosed wrist pain and paresthesia. Claimant was advised to use a wrist split, ice, Advil, and rest the wrist. Dr. Balamuniswamy provided claimant a work note for that date and issued a referral for orthopedic evaluation at ORA Orthopedics. (JE1, pp. 5-6)

Pursuant to Dr. Balamuniswamy's referral, claimant presented to ORA Orthopedics on April 3, 2015. Claimant indicated he sought evaluation for worsening right hand and finger numbness of a 3 to 4 week duration. He identified symptoms of pain, numbness, tingling, weakness, and stiffness, with the problems interfering with his ability to work. (JE2, p. 7) Michael Turner, M.D., evaluated claimant for complaints of atraumatic onset of numbness and paresthesias in the thumb, index, long, and ring fingers of the right hand, with an additional complaint of nighttime paresthesias. Dr. Turner noted claimant worked as a welder and difficulty using the right hand had resulted in claimant taking April 2, 2015 off work. Examination of the right upper extremity revealed positive Phalen's and Tinel's testing. (JE2, p. 9) Dr. Turner assessed early onset of right carpal tunnel syndrome. He prescribed a Medrol Dosepak and night splinting, with claimant to follow up in 3 weeks' time. (JE2, p. 10)

On April 28, 2015, claimant returned to Dr. Turner. Claimant reported "great improvement" in nighttime pain symptoms. Claimant denied difficulties working as a welder and denied paresthesias or the need to brace at work. Examination of the right upper extremity revealed full range of motion of the elbow, wrist, and digits; no evidence of muscle wasting; overall neurovascularly intact; and negative Phalen's and Tinel's at the wrist. Dr. Turner assessed early onset right carpal tunnel syndrome, improved with splinting and Medrol Dosepak. (JE2, p. 11) Dr. Turner recommended continued night splinting and use of over-the-counter Aleve, as necessary. In the event of return of paresthesias, Dr. Turner noted an EMG/NCV study would be indicated. Claimant was released to return on an as-needed basis. (JE2, p. 12) Dr. Turner authored a return-to-work slip, releasing claimant to return to work with no restrictions, but noted he may need to wear a right arm brace. (JE2, p. 13)

Claimant testified his right-sided symptoms improved and although he may have experienced some symptoms at work, the symptoms did not interfere with his ability to work. Thereafter, he began duties in another department, performing reclaim welding work. He testified his right-sided symptoms remained about the same and did not cause him to miss any work; however, he then began to experience worsening left-sided symptoms. (Claimant's testimony)

On June 9, 2015, claimant presented to defendant's occupational health services and an incident report was created. Claimant described pain and numbness of his left hand and wrist. (JE3, p. 30) He was seen on June 10, 2015 by Debra Slater, RN. RN Slater noted complaints of pain, numbness, and tingling of the left hand. Claimant reported an onset of symptoms after beginning his job assignment one month prior. Thereafter, claimant was seen by Lester Kelty, M.D. Dr. Kelty noted claimant worked as a welder and left-handed symptoms began 2.5 to 3 weeks prior. Dr. Kelty noted a patient history of right carpal tunnel syndrome. On examination, Dr. Kelty recorded

negative Phalen's and Tinel's testing, as well as a question of altered sensation of the third digit. Dr. Kelty's note concluded with the statement, "Safety to see." No diagnosis or treatment plan was delineated in Dr. Kelty's June 10, 2015 notation. (JE3, p. 31) Claimant testified Dr. Kelty informed claimant his injury did not happen at defendant and to return to work; he offered no medical treatment or recommendations. (Claimant's testimony)

Claimant returned to work and in approximately September 2015, he transferred to another department to weld dump truck parts. During this period, claimant testified his carpal tunnel symptoms remained, but were not as severe and he did not seek any medical treatment. From September 2015 until February 2020, claimant remained in the same department, although automation did change some requirements of his duties. During this time, claimant did not miss work due to his conditions and testified he did not think the conditions were serious in nature. (Claimant's testimony)

In February 2020, claimant testified his symptoms suddenly worsened. He began to experience bouts of paralysis in his left arm and would wake from sleep due to severe pain. The symptoms impacted his ability to care for himself. Claimant testified his work duties at the time involved welding and grinding on dump truck bins, which regularly required grinding of poor robotic welds. Claimant believes these duties caused his bilateral symptoms. (Claimant's testimony)

Claimant represents that on February 17, 2020, claimant informed his supervisor, Jayson Norton, that he suffered with pain and periods of paralysis of his bilateral upper extremities, wrists, hands, and fingers due to his work duties. He indicated the symptoms interfered with his sleep and required medical attention. (Claimant's testimony; CE2, p. 3) Claimant testified Mr. Norton did not advise claimant to report to the onsite clinic or to seek medical treatment; he simply asked claimant to keep him updated. (Claimant's testimony) Claimant's coworker, Nathaniel Marxen, was present at the time of the conversation. (CE2, p. 3) Mr. Marxen authored a written statement confirming claimant advised Mr. Norton of his symptoms and further indicating that Mr. Norton did not advise claimant to report his injury. (CE3, p. 7)

On February 21, 2020, claimant returned to ORA Orthopedics. On intake forms, claimant noted complaints of pain, numbness, tingling, weakness, swelling, and stiffness. Claimant described the pain as sharp and throbbing, with radiation in the arms. (JE2, p. 14) Claimant was evaluated by board certified orthopaedic surgeon, Scott Collins, M.D., who noted a chief complaint of bilateral arm pain, numbness, tingling, and weakness. (JE2, p. 16; DEI, p. 24) Claimant reported the symptoms began February 15, 2020, with a current pain level of 7 on a 10-point scale. On physical examination, Dr. Collins found positive carpal compression tests bilaterally, as well as weakness of the left triceps and bilateral wrist extensors. Dr. Collins assessed bilateral upper extremity radiculopathy and recommended a cervical spine MRI due to weakness on physical examination. Pending completion of the MRI, Dr. Collins prescribed a Medrol Dosepak. (JE2, p. 16)

On approximately February 26, 2020, claimant sent a text message to supervisor, Mr. Norton, advising he had undergone an MRI. (CE2, p. 3; CE3, p. 10)

Claimant returned to Dr. Collins on March 6, 2020, at which time, Dr. Collins reviewed claimant's cervical MRI and found no identifiable pathology to explain claimant's symptoms. Dr. Collins ordered a course of physical therapy, prescribed Relafen, and ordered an EMG of the bilateral upper extremities. (JE2, p. 18)

On April 17, 2020, claimant returned to Dr. Collins for EMG review. Dr. Collins opined claimant's EMG demonstrated bilateral carpal tunnel syndrome, left worse than right. Dr. Collins recommended bilateral carpal tunnel releases. (JE2, p. 19) Claimant testified Dr. Collins inquired what type of work claimant performed; claimant replied he was a welder at defendant, but did not further discuss his duties. Claimant testified that upon this discussion and learning of his need for surgery, he then realized the seriousness of his conditions. (Claimant's testimony)

On May 15, 2020, claimant completed defendant's "weekly indemnity ('WI') disability" application. Thereon, claimant indicated he sought benefits as a result of carpal tunnel syndrome. He represented the condition did not arise out of and in the course of his employment. The application signature block, signed by claimant, notes the applicant was submitting a claim for weekly non-occupational disability benefits. Dr. Collins completed the physician statement of the application. Dr. Collins noted claimant would be unable to work from May 15, 2020 through July 31, 2020 due to bilateral carpal tunnel syndrome with surgical releases. (CE4, p. 13; DEA, p. 1)

Claimant underwent right carpal tunnel release by Dr. Collins on May 15, 2020. (JE4, p. 49) In the pre-operative note, Dr. Collins noted complaints of right hand pain, numbness, tingling, stiffness, weakness, and dropping of items. Dr. Collins indicated claimant was having significant difficulties at work. (JE4, p. 47)

Left carpal tunnel release followed on June 19, 2020. (JE5, p. 50)

On July 8, 2020, claimant returned to Dr. Collins for evaluation. At that time, claimant reported he was doing well, but described the recovery process as slower on the left arm than it had been with the right arm. Claimant also reported some minimal residual numbness, but denied numbness and tingling. Dr. Collins released claimant to normal activities, as tolerated. He recommended use of ice, heat, and activity modification. (JE2, p. 22)

Claimant returned to ORA Orthopedics on August 7, 2020. On that date, he was examined by Andrea Black, PAC. PAC Black described claimant as doing well and happy with his progress. Claimant reported incisional area pain, primarily left-sided. He also reported improved numbness, but some residual numbness of the left middle finger. Claimant denied numbness, tingling, or swelling. On examination, PAC Black found slightly altered sensation to light touch of the volar surface of the left middle finger, but otherwise intact sensation to light touch. PAC Black found intact and well-healing incisions and full, active range of motion of the hands. Following examination,

PAC Black released claimant to return to work without restrictions and to return to clinic as needed. Claimant was advised to massage over the incision areas to help desensitize scar tissue and use ice, heat, and activity modification. (JE2, pp. 23-24)

Defendant paid claimant WI benefits from May 18, 2020 through August 9, 2020. Claimant returned to work on August 10, 2020. His weekly benefit rate was \$599.00. (CE4, p. 14; DEB, pp. 2-3; DEC, p. 4)

Claimant testified he returned to work on August 10, 2020. He returned to the same department, but to different duties, as bin welding was moved to third shift. As claimant did not want to work third shift, his duties changed to welding on frames. Claimant testified his primary duty is welding and described the work as ergonomic. He noted he no longer must grind in awkward positions and only rarely uses grinders and hammers. (Claimant's testimony)

Claimant testified the surgeries improved his symptoms and resulted in less pain and a halt of paralysis. Despite the improvement, claimant testified he continued to experience some symptoms of pain, numbness, cramping, and weakness. (Claimant's testimony)

Claimant incurred medical expenses in treatment of his bilateral carpal tunnel conditions. Per Claimant's Exhibit 6, charges totaled \$5,323.36. (CE6, pp. 29-36)

On October 29, 2020, claimant filed an original notice and petition in arbitration, seeking workers' compensation benefits as a result of an alleged April 13, 2020 injury. (Agency File; DED, p. 5) As a result, defendant completed a first report of injury form, identifying defendant first had knowledge of claimant's alleged April 13, 2020 injury on November 2, 2020. (DEE, p. 6)

On November 5, 2020, claimant presented to defendant's onsite clinic and was examined by Brian Dugan, RN. RN Dugan noted subjective complaints of bilateral forearm and wrist pain, as well as numbness to the hands. He noted claimant was status-post surgical releases. On examination, RN Dugan noted stable vital signs and claimant was ambulatory and steady. In the plan section of the visit note, RN Dugan noted only, "Injury first occurred 2/2020. f/u to be determined." (DEF, p. 10)

Thereafter, it appears claimant was evaluated at defendant's onsite clinic by Christine Deignan, M.D.² (DEF, p. 8) Dr. Deignan served as defendant's medical director from 2007 to 2016 and workers' compensation medical director from 2013 to 2016. From 2017 onwards, Dr. Deignan performed independent medical evaluations. (DEN, p. 66) Dr. Deignan noted claimant presented to the clinic on November 5, 2020 and reported he sustained bilateral carpal tunnel syndrome relating to his work activities

² Dr. Deignan's visit note is dated November 9, 2020 at 10:30 a.m.; however, the content of the note indicates claimant initially presented on November 5, 2020. The visit note also indicates a jobsite visit would be scheduled. The resulting jobsite notes are dated November 9, 2020 at 9:44 a.m. It appears Dr. Deignan did not record her visit note until after conclusion of the jobsite evaluation on November 9, 2020. As a result, it is unclear the date and time Dr. Deignan evaluated claimant. (See DEF, pp. 8-10)

as a welder. Claimant related his symptoms to gripping grinders and hammers. Dr. Deignan noted claimant was right hand dominant. She noted claimant reported the "same symptoms" five years prior; at that time, he related the symptoms to work activities, but believed the condition was "denied as work related." Thereafter, claimant treated conservatively for carpal tunnel syndrome with Dr. Turner and improved. In February 2020, bilateral hand pain and numbness began to interrupt sleep. Claimant began a course of treatment with Dr. Collins, including surgical releases. After surgery, symptoms improved, with the exception of stiffness of the left hand. Dr. Deignan noted claimant was capable of fully opposing all fingers on the right hand, but had difficulty reaching the left thumb to the left fifth finger. Claimant also reported reduction in right-sided grip strength. (DEF, p. 8) Dr. Deignan performed a physical examination and assessed bilateral carpal tunnel, treated surgically with good result. She indicated a jobsite visit would be scheduled. (DEF, p. 9)

The resulting jobsite visit note was recorded on November 9, 2020. Dr. Deignan noted the attendance of Mike Perry, safety analyst, and Jason Norton, supervisor. Also in attendance was claimant, who was observed and interviewed. Dr. Deignan observed claimant welding and claimant identified his tools, including a 5-pound hammer, a grinder, and two sanders. (DEF, p. 9) Thereafter, Dr. Deignan offered the following conclusions:

Conclusions: The job activities are not such that bilateral hands are exposed to work activities that would produce symptoms of bilateral carpal tunnel. [Claimant] was aware of the bilateral carpal tunnel for 9 months before reporting an injury or illness to the company. He sought treatment and was off on WI during the surgery and recovery without reporting to the company any claim for work relatedness.

(DEF, pp. 9-10)

Dr. Deignan continued:

In my medical opinion this case should be disputed based on:

1. His job is one dealing with large parts welding and grinding. Grind time per part, according to the supervisor, averages about 2 hours with a range of 30 min to 4 hours. 1-2 dump truck parts are made per shift. If parts come to the weld station and the parts are not fitting together well the operator has the option of sending those to the repair department.
2. 5 pound hammer is used at approximately 11 locations per side or 22 times per part (with 1-2 parts made per day[]).
3. Employees [*sic*] symptoms of bilateral numbness and tingling in the hands were first reported about 5 years ago at which time they were disputed as work related and he treated with Dr. Turner under his personal medical insurance.
4. [Claimant] gave a history on November 9, 2020 in OHS that he has been having symptoms of recurrent bilateral numbness and tingling in

his hands “for years”. He sought medical treatment with Dr. Scott Collins February 2020 without reporting an injury or illness to the company. He proceeded to have surgery on right carpal tunnel and left carpal tunnel without reporting an [sic] claim of work relatedness to the company.

(DEF, p. 9)

On November 19, 2020, defendant’s counsel authored correspondence to claimant’s counsel. Thereby, counsel represented defendant’s first notice of an alleged April 13, 2020 injury was upon receipt of claimant’s petition. Counsel represented an investigation had been completed and defendant denied claimant’s alleged bilateral carpal tunnel syndrome injury. Defendant denied the injury arose out of claimant’s work and raised defenses of lack of timely notice under section 85.23 and barred by the statute of limitations found in section 85.26. (DEG, p. 11)

On December 15, 2020, defendant’s counsel conferenced with Dr. Collins regarding claimant’s conditions. On December 16, 2020, defendant’s counsel sent a purported summary of the conversation to Dr. Collins and requested Dr. Collins review, sign, and return the summary if Dr. Collins believed it to be accurate. (DEI, p. 20) Dr. Collins signed off on the summary on January 12, 2021. (DEI, p. 22) The summary briefly noted the history of claimant’s treatment with Dr. Collins, including that claimant last saw Dr. Collins on July 8, 2020 and PAC Black on August 7, 2020. Claimant had not returned to ORA Orthopedics since that time and had no follow up care scheduled. Dr. Collins expressed agreement with PAC Black’s release of claimant from care and to return to work without restrictions effective August 7, 2020. Dr. Collins opined claimant did not require further treatment or medication following the release on August 7, 2020, nor did he expect the need for further care in the future. Dr. Collins opined claimant achieved maximum medical improvement (MMI) as of August 7, 2020. (DEI, pp. 20-21) With respect to the question of permanent impairment, if any, Dr. Collins agreed with counsel’s summary stating:

You agree with what other orthopedic physicians have also told me – when carpal tunnel releases are properly performed, there is typically no resulting permanent impairment. While you have not been asked to do a formal impairment rating or formal impairment evaluation, with your performing successful carpal tunnel releases on each side, it is your opinion that [claimant] would not have any residual or resulting permanent impairment in either his right arm/right side or left arm/left side. Therefore, it is your opinion that [claimant’s] permanent impairment rating from his now resolved bilateral carpal tunnel syndrome would be zero.

(DEI, p. 21)

With respect to the issue of causation of claimant’s bilateral carpal tunnel, Dr. Collins endorsed the following statements:

You cannot state that [claimant's] welding job at [defendant] caused [claimant's] bilateral carpal tunnel syndrome. It is your opinion that it is more likely than not that [claimant's] welding job at [defendant] did not cause [claimant's] bilateral carpal tunnel syndrome. You hold this opinion based upon [claimant's] relatively young age (he is 31 years old) and the fact that [claimant] had carpal tunnel syndrome bilaterally – on both sides. It is your opinion that based on [claimant's] relatively young age, it would have taken longer for [claimant's] bilateral carpal tunnel syndrome to develop had it actually been caused by his job at [defendant]. It is also your opinion that the presence of carpal tunnel syndrome bilaterally—on both sides—makes it less likely that [claimant's] bilateral carpal tunnel syndrome was actually caused by [claimant's] job at [defendant] given a manual laborer typically does not use his non-dominant arm as frequently on the job as he does his dominant arm. If a job actually causes carpal tunnel syndrome, it typically does not cause it on the non-dominant arm/non-dominant side.

(DEI, p. 21)

At the referral of his counsel, on January 29, 2021, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D. for independent medical evaluation. (CE5, p. 19) Dr. Bansal issued a report containing his findings and opinions dated March 30, 2021. (CE5, p. 28) Dr. Bansal reviewed claimant's medical records, including bilateral hand and wrist evaluations dating to 2015. (CE5, pp. 20-23) Dr. Bansal examined claimant's bilateral upper extremities. Bilaterally, Dr. Bansal noted mild tenderness to palpation of the volar aspect of the wrist; positive Tinel's sign; positive Phalen's sign; loss of two-point discrimination over the thumb, index finger, and long finger; and full range of motion of the wrist. (CE5, p. 24)

Claimant indicated he had worked as a welder at defendant for just over 10 years and developed bilateral hand numbness and tingling approximately six years prior. At that time, a "company doctor" informed claimant his condition was not work-related. (CE5, p. 23) He returned to work and approximately one year prior, significant pain and paralysis began to awaken claimant from sleep, at which time claimant sought medical treatment. (CE5, pp. 23-24) Dr. Bansal noted claimant's work as a welder on dump truck beds resulted in exposure to a "lot of vibration all day long." He further noted claimant spent the first 3 to 4 hours per shift using a 7-inch grinder to remove incorrect robotic welds and anywhere from 1 to 6 hours per shift using welding tools in a variety of positions. (CE5, p. 23)

Following treatment, Dr. Bansal noted claimant continued to report numbness and tingling through the bilateral hands. Claimant also reported a lack of sensation when rubbing his fingers together and difficulty with fine motor movements and dropping objects. Claimant informed Dr. Bansal his welding duties had changed to involve dump truck frames, rather than beds of trucks. The new duties involve less vibration and more infrequent use of grinders, but continued fine motor movements. (CE5, p. 24)

Following records review, history, and examination, Dr. Bansal assessed bilateral carpal tunnel syndrome, status post release. Dr. Bansal agreed with the MMI date of August 7, 2020 and did not recommend further treatment. (CE5, p. 27) Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Tables 16-10 and 16-15, Dr. Bansal found a 6 percent right upper extremity impairment and a 4 percent left upper extremity impairment due to digital sensory deficits. (CE5, pp. 25-26) Dr. Bansal recommended restrictions of no lifting greater than 20 pounds occasionally or 10 pounds frequently with either hand; and avoidance of vibratory tools. (CE5, pp. 27-28) In response to inquiry as to whether claimant's work at defendant represented a substantial causal, contributing, or aggravating factor in causing claimant's impairments, Dr. Bansal opined claimant performed job tasks that were capable of increasing carpal tunnel pressures. Dr. Bansal highlighted the "significant" pressure on the wrists due to repetition, frequent vibration, the positions of the wrists while operating a heavy grinder multiple hours per day, and the grabbing, turning, and gripping required when performing welding duties. Dr. Bansal found the duties qualified as having a strong potential to cause carpal tunnel syndrome. (CE5, p. 27)

Defendant submitted video evidence of an employee performing the bin welding job position. The video evidence covers 24 separate files totaling in excess of six hours of content. Included are depictions of welding on dump truck bins, with the employee's arms and body in differing positions and requiring different durations to complete the welds, as well as operating a handheld sander and brief use of a hammer. (DEL)

Claimant testified he reviewed the supplied job videos. He testified the videos provided an accurate depiction of welding duties, but he did not recall viewing the employee using a grinder. In the bin welding job, claimant testified he spent 1 to 4 hours per day operating a 7-inch grinder, which required considerable force to operate. He then spent 4 to 7 hours per day welding. As the videos displayed predominantly welding, claimant testified the videos did not fairly reflect all of his prior duties. Claimant testified he continues to experience some symptoms at work, but he does not have difficulty performing his job. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained an injury arising out of and in the course of his employment on April 13, 2020.

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

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" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the

injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. 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).

Three physicians have offered opinions with respect to a potential causal connection between claimant's welding work at defendant and his bilateral carpal tunnel syndrome. Treating surgeon, Dr. Collins, opined he could not state claimant's welding job caused claimant's condition and more likely than not that the duties did not cause bilateral carpal tunnel syndrome. Dr. Collins based the opinion upon claimant's relatively young age and the bilateral nature of the condition, which would not be as likely to develop in a manual laborer as would the condition on only the dominant side. After performing a jobsite review of the welding position, Dr. Deignan opined claimant's job activities were not such that the bilateral hands were exposed to work activities that would produce symptoms of bilateral carpal tunnel syndrome. Following an independent medical examination, Dr. Bansal opined that claimant's job activities were capable of increasing carpal tunnel pressures. Dr. Bansal highlighted the “significant” pressure on the wrists due to repetition, frequent vibration, the positions of the wrists while operating a heavy grinder multiple hours per day, and the grabbing, turning, and gripping required when performing welding duties. Ultimately, Dr. Bansal found the duties qualified as having a strong potential to cause carpal tunnel syndrome.

The basis of each medical opinion could be easily critiqued. It is unclear what information Dr. Collins possessed regarding the details of claimant's job duties, as claimant testified the two only briefly discussed his work as a welder. Dr. Collins did not author the content of his own report; however, Dr. Collins signed off on the content of the summary as accurate. Dr. Collins is an orthopedic surgeon with experience treating carpal tunnel syndrome; claimant selected Dr. Collins as his treating surgeon and expressed no complaints regarding his care. Dr. Deignan offered only conclusory opinions with respect to causal connection and did not explain her rationale. Her notes mirror legal conclusions and recommendations, as opposed to remaining in the medical realm. However, Dr. Deignan is uniquely situated in the best position to offer an opinion regarding claimant's work duties, as she personally observed performance of the duties and interviewed claimant onsite. Dr. Bansal's opinion is somewhat equivocal in nature and importantly, he does not specifically state claimant's work activities more likely than not caused or were a substantial, contributing factor in development of bilateral carpal tunnel syndrome. Rather, Dr. Bansal opined the duties were capable of increasing carpal tunnel pressures and had a strong potential to cause bilateral carpal tunnel syndrome.

It is ultimately claimant who bears the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of employment. Although I find claimant's claim plausible, the medical opinions do not support a determination that claimant has met his burden. Dr. Bansal fell short of opining claimant's bilateral carpal tunnel syndrome was causally related to his work activities and instead offered a more abstract opinion that claimant's duties had a strong potential to cause bilateral carpal tunnel syndrome. This equivocal opinion is insufficient to allow claimant to prevail when compared to the concrete, contrary opinions of Drs. Collins and Deignan, who served as treating physician and onsite evaluator, respectively.

As I find claimant has failed to prove by a preponderance of the evidence that his bilateral carpal tunnel conditions arose out of and in the course of his employment, it is unnecessary to consider defendant's defenses under Iowa Code sections 85.23 or 85.26. It is further unnecessary to consider claimant's claims for temporary disability, permanent disability, or medical benefits. As claimant failed to prove a compensable injury, he is not entitled to reimbursement for Dr. Bansal's independent medical examination under Iowa Code section 85.39. Finally, as claimant failed to prevail on his claim, taxation of costs against defendant is inappropriate under Iowa Code section 86.40 and rule 876 IAC 4.33.

ORDER

THEREFORE, IT IS ORDERED:


The parties are ordered to comply with all stipulations that have been accepted by this agency.

Claimant shall take nothing from these proceedings.

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

Costs are taxed to claimant pursuant to 876 IAC 4.33.

Signed and filed this 23rd day of February, 2022.


ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

MaKayla Augustine (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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.