BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILLY JOE FAWCETT, JR., Claimant, vs. MULTIBAND, Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED MAY 17 2018 WORKERS COMPENSATION	File Nos. 5051861, 5065866 ARBITRATION DECISION Head Note Nos.: 1100, 1803, 2500

STATEMENT OF THE CASE

Billy Joe Fawcett, Jr., claimant, filed two petitions in arbitration seeking workers' compensation benefits from Multiband, the employer, and New Hampshire Insurance Company.

The petitions proceeded to hearing together on April 25, 2018.

The evidentiary record includes the following: Joint Exhibits JE1 through JE8 in File Number 5051861; Joint Exhibits JE1 through JE10 in File Number 5065866; and, Defendants' Exhibits A through D. Claimant provided testimony at hearing.

The parties filed a separate hearing report in each file at the commencement of the arbitration hearing. On the hearing reports, 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 parties waived the opportunity to file post-hearing briefs and the matter was considered fully submitted at the conclusion of the hearing on April 25, 2018.

ISSUES - File No. 5051861

The parties submitted the following disputed issue for resolution:

1. Extent of industrial disability regarding the stipulated October 15, 2014 work injury.

ISSUES - File No. 5065866

The parties submitted the following disputed issues for resolution:

1. Whether the stipulated injury of September 11, 2015 includes the right shoulder or is limited to the right wrist/arm.

2. Extent of industrial disability, if the injury involves the shoulder. If the injury is limited to the right wrist/arm, the parties agree that the extent of permanent partial disability is eight percent.

3. Medical expenses.

4. Underpayment of temporary total disability (TTD) and permanent partial disability (PPD) paid prior to the date of the hearing.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

Claimant was 38 years old at the time of the hearing. He dropped out of high school during his senior year while earning grades of C's and D's. He got his GED a few years after dropping out hoping to join the Marine Corps, but failed a urinalysis and was prevented from enlisting. He later obtained his high school diploma, hoping to join the army, but was refused enlistment. There was no evidence to suggest that either enlistment refusal was due to any physical limitation or restriction.

Claimant is right-hand dominant. (Exhibit JE2, page 7, File No. 5065866)

1) WORK HISTORY

Claimant previously worked in fast food restaurants and part-time at a lumber yard during high school. He worked full-time at the lumber yard when he dropped out of high school. He later worked at Vermont Foundry for about 5 years, pouring liquid metal into molds, earning about $9.50 per hour.

In 2005, claimant began working in his current capacity. At that time the company was known as Bluegrass. The name and/or ownership of the company has changed several times over the past 13 years, from Bluegrass to Direct-Tech to Multiband, and finally to Goodman Networks. Claimant's job with each of these employers has been largely the same.

The injuries that are the subject of the petitions in this matter occurred while claimant worked for Multiband.

Claimant's job with Multiband included all facets of installing satellite television service. This required him to carry extension ladders weighing up to about 75 pounds and rolls of cable weighing approximately 40 to 50 pounds. He climbed into attics, crawl

spaces and worked in basements and outdoors. He had to drill holes, run cable and work on ladders. Most of his jobs were in and around the same geographic area. He might drive up to 15 to 20 minutes between jobs. His pay structure with each employer has been the same. His pay is based on production. For example, claimant testified that he was paid $110.00 for a four-room installation regardless of the time it took him to perform the work. Consequently, the faster he worked the more jobs he could get done in a day, resulting in higher income. The overtime rate for installers is based on the individual installer's average earnings. So, when an installer did more jobs in a 40 hour week, he/she earned a higher overtime rate than a person who did fewer jobs in that same period of time.

Claimant earned wages in 2017 that were roughly similar to the wages that he earned before these injuries occurred. He testified that following the injuries, he could still do his job, but he worked slower and consequently had to work more hours to maintain a similar level of income that he received prior to the work injuries.

At the time of the hearing, claimant continued to be employed in the same job capacity, albeit under new ownership/name, doing the same job that he has done since 2005.

I find that claimant is motivated to maintain employment.

2) PRIOR MEDICAL CONDITION

Prior to working for Bluegrass, which became known as Multiband, claimant had no chronic conditions or limitations concerning his back, his shoulders or any other part of his body. He testified that he passed a pre-employment physical when he began working as a satellite installer.

3) THE INJURIES

The parties stipulated that claimant sustained an injury that arose out of and in the course of his employment on October 15, 2014. On that date, claimant was carrying equipment into a customer's home when he slipped and fell and had pain in his back. He went to Great River Medical Center Occupational Medicine five days later on October 20, 2014. (Ex. JE1, p. 1, File No. 5051861) He reported pain in his low back and right leg, and occasional numbness in his right foot. He described his pain level as 3/10. (Id.)

On September 11, 2015, claimant sustained another stipulated injury that arose out of and in the course of his employment when he fell from a ladder. He finished the job he was working on and was given another job to do that day by his employer. Claimant went to the emergency room at Great River Medical Center the following day on September 12, 2015. (Ex. JE1, p. 3, File No. 5065866) Defendants admit that claimant sustained a right wrist/arm injury from this incident, but they dispute that he sustained an injury to his right shoulder. On September 12, 2015, claimant was seen at

Great River Medical Center and reported that he had pain in his left wrist and left hip and buttock. (Ex. JE1, p. 2, File No. 5065866)

4) POST-INJURY MEDICAL TREATMENT

October 15, 2014 Injury

Following the October 15, 2014 injury, claimant was seen at Great River Medical Center on October 20, 2014, and the diagnosis was sciatica, lumbar spine on the right and myofascial syndrome, lumbar spine. He was instructed to start physical therapy, and take prednisone and naproxen and use moist heat and ice therapy. (Ex. JE1, p. 2, File No. 5051861) He was assigned work restrictions, which included limiting lifting, pushing and pulling to five pounds with both hands. (Ex. JE1, p. 4, File No. 5051861)

On October 30, 2014, claimant described the pain, tingling and numbness as "minimal," but "constant." (Ex. JE1, p. 5, File No. 5051861) It was made worse by prolonged sitting. (Id.)

On November 23, 2014, claimant reported that the pain in his back was mostly gone, but he continued to have pain in his right buttock and pain and numbness down his right leg. (Ex. JE1, p. 9, File No. 5051861)

On November 26, 2014, claimant reported unchanged pain at a level of 3/10 and an MRI was recommended along with additional physical therapy. (Ex. JE1, p. 13, File No. 5051861)

The MRI was performed on January 2, 2015 and showed significant right paracentral disc herniation at L5-S1 with significant lateral recess stenosis and nerve root displacement and compression, along with mild lumbar spondylosis at L4-L5. (JE1, p. 16, File No. 5051861)

On January 5, 2015, claimant described constant numbness and pain in his lower back and right leg. He reported his pain level as 4/10 and a feeling that "it has taken a step backward without any further recovery." (Ex. JE1, p. 17, File No. 5051861) Following a review of the MRI, a referral was made to a spine specialist. (Id.)

Claimant was then seen by Robert Foster, M.D. of Great River Orthopedic Specialists, who recommended a lumbar discectomy. (Ex. JE2, p. 2, File No. 5051861)

On April 15, 2015, claimant underwent surgery with Dr. Foster, who performed "Right L5 hemilaminectomy and right L5-S1 partial facetectomy" and a "Right L5-S1 microdiscectomy." (Ex. JE2, p. 7, File No. 5051861)

By May 28, 2015, claimant had started physical therapy and was having some improvement, but he also had continued back pain. Dr. Foster stated that his job is demanding and the plan at that time was to allow him to return to work with a 20 pound lifting restriction. (Ex. JE2, p. 8, File No. 5051861)

On July 8, 2015, claimant was returned to regular full-duty work. (Ex. JE2, p. 10, File No. 5051861)

On July 30, 2015, Dr. Foster wrote a letter to claimant's attorney stating that "[b]ased on the AMA Guides to Evaluation of Permanent Impairment-Fifth Edition, Page 384, Table 15-3, he is a category 3 DRE impairment. This is a 13% impairment to the person as a whole." Dr. Foster also confirmed that claimant was released to full-duty without restrictions and that he was at maximum medical improvement (MMI). (Ex. JE3, p. 1, File No. 5051861) There is no particular basis discussed for placement in the DRE 3 category or the rating. Dr. Foster does not reference any examination findings in support of his conclusion.

On December 17, 2016, claimant was seen by Theron Jameson, D.O. who stated that concerning permanent impairment related to the October 15, 2014, injury that he "would recommend 13% whole person impairment," based on the "AMA Guides to the Evaluation of Permanent Impairment, 5th Edition." (Ex. JE5, p. 9, File No. 5051861) Dr. Jameson, like Dr. Foster, did not provide any discussion of how he arrived at this rating, nor reference to any particular examination findings to support his conclusion. Also, he makes no reference to the tables or page numbers from the AMA Guides that he relied upon.

Despite their frailties, I see no contradictory evidence in the record to the conclusions reached by Dr. Foster and Dr. Jameson concerning permanent impairment. Therefore, I accept the opinions of both Dr. Foster and Dr. Jameson, who concluded that claimant sustained 13 percent permanent impairment to the whole person as a result of the October 15, 2014 work injury.

Neither Dr. Foster nor Dr. Jameson assigned any work restrictions as a result of the October 15, 2014 work injury.

Although claimant testified that he remains able to do all aspects of his job and he continued as of the date of the hearing to work in the same job, doing the same type of work that he did prior to the injuries, he stated that he works more slowly now than he did before due to his back pain. He stated that now he does his job in a certain order, which takes longer, but allows him to maintain some control of his back pain throughout the work day. Because claimant works more slowly than he did before the work injury, he is required to work more hours to obtain similar pay.

Considering claimant's industrial disability due to this October 15, 2014 work injury, I note the significance of his injury and resulting surgery, his medical condition prior to and after the injury and his functional impairment rating would tend to support a higher industrial disability finding. However, I also note that his continued work in the same job, his relatively young age, his motivation to maintain employment and his lack of any work restrictions would tend to support a lower industrial disability finding. Considering these factors and all other appropriate factors for the assessment of industrial disability, I find that claimant has sustained 20 percent industrial disability.

The parties have stipulated that the appropriate commencement date for permanency benefits is July 8, 2015. (Hearing Report, p. 1)

The parties have stipulated that defendants are entitled to a credit of 69.571 weeks against any permanency benefit awarded. (Hearing Report, p. 2)

The parties have stipulated that the correct weekly workers' compensation benefit rate in this case is $853.14. (Hearing Report, p. 1)

September 11, 2015 Injury

Following the September 11, 2015 injury in which claimant fell off a ladder, he was seen at Great River Medical Center on September 12, 2015. After an x-ray of the left wrist and pelvis, he was diagnosed with a contusion of the left hip and a sprained left wrist. He was told to follow-up with his primary care physician within one week. (Ex. JE1, p. 6, File No. 5065866) He was given a prescription for 800 mg ibuprofen and told to use ice on the wrist. (Id.) There was no mention of right shoulder pain.

On September 28, 2015, claimant was seen at Great River Orthopedic Specialists by Atiba Jackson, M.D. He described the injury of falling off the ladder and having pain and discomfort since that time. (Ex. JE2, p. 1, File No. 5065866) The assessment at that time was bilateral wrist pain, with no evidence of fracture of the left wrist. (Id.) The recommendation was for an evaluation of the right wrist and the left hip. (Id.) There was no mention of right shoulder pain.

On December 11, 2015, claimant had a follow-up visit concerning right wrist pain. (Ex. JE2, p. 2, File No. 5065866) An MRI of the right wrist was recommended. (Id.) Again, there is no mention of right shoulder pain.

The MRI revealed "a tiny linear area of signal in the triangular fibrocartilage near the distal radial attachment," but was otherwise unremarkable. (Ex. JE2, p. 3, File No. 5065866) He was referred to a hand surgeon. (Ex. JE2, p. 6, File No. 5065866)

On February 3, 2016, claimant was seen by Craig Bottke, M.D., at Great River Orthopedic Specialists. (Ex. JE 2, p. 7, File No. 5065866) Claimant described pain in both wrists following the fall from the ladder on September 11, 2015. He noted that the pain in the left wrist had resolved, but he continued to have right wrist pain. Claimant had not improved with time, splinting, and hand therapy. Dr. Bottke suspected a right triangular fibrocartilage tear. Alternative treatments including injection and arthroscopy were discussed and claimant elected to proceed with arthroscopy. (Ex. JE2, p. 8, File No. 5065866) He was given a new wrist brace and continued on work restrictions of no heavy or repetitive lifting or gripping and no heavy pushing, pulling, twisting or turning and no climbing. (Id.) Again, there is no mention of any right shoulder pain.

On March 12, 2016, claimant was seen at Great River Medical Center emergency room complaining of right foot and right shoulder pain from a fall and the

"onset was just prior to arrival." (Ex. JE1, p. 8, File No. 5065866) He described pain in his shoulder when extending his arm "completely up." (Ex. JE 1, p. 10)

On March 24, 2016, claimant had surgery on his right wrist with Dr. Bottke. (Testimony)

On April 6, 2016, 13 days post-surgery, claimant was seen by Dr. Bottke for follow-up. (Ex. JE2, p. 11, File No. 5065866) Dr. Bottke stated that claimant had an

> ulnocarpal abutment syndrome with a central triangular fibrocartilage tear and also a peripheral tear. He underwent debridement of the central tear and repair of the peripheral tear. He also had a partial triquetrolunate ligament tear which was debrided.

(Id.) He was noted to be doing well post-operatively and he was to remain off work with only gentle motion of his wrist. (Id.) He was changed "to a removable brace." (Id.)

On April 7, 2016, claimant was seen by Theron Jameson, D.O. in follow-up to the March 12, 2016 emergency room visit for his right foot and right shoulder pain. (Ex. 2, p. 13, File No. 5065866) Claimant reported that in January, he fell on his right shoulder while snowboarding and he fell again on his right shoulder playing basketball in March 2016 and he has been having shoulder pain since that time. X-rays of the shoulder were obtained due to pain in the shoulder "[s]tatus post fall during basketball." (Ex. JE2, p. 13, File No. 5065866) There is no mention of the work injury on September 11, 2015, or falling from a ladder. (Id.) Claimant testified that during this initial visit with Dr. Jameson, his right arm was in a sling as a result of his right wrist injury. (Testimony)

On April 20, 2016, claimant was seen for follow-up of his wrist surgery by Dr. Bottke, who noted that claimant had been off work and in a brace and that he was experiencing slow improvement. A course of hand therapy was recommended to improve range of motion and strength. He was released to return to work with restrictions of no lifting or gripping over five to ten pounds with the right hand and was to "use the wrist brace as needed." (Ex. JE2, p. 16, File No. 5065866)

Claimant underwent a right shoulder arthrogram on or about April 21, 2016. (Ex. JE2, p. 18, File No. 5065866) At that time, the history recorded is that claimant "[f]ell 9/11/15, injured wrist – had wrist in a sling status post surgery for 2 weeks, once out of sling difficulty raising shoulder." (Ex. JE2, p. 18, File No. 5065866) The MRI also related a history of falling off a ladder, but describes the event as happening in January, not September, 2015. (Ex. JE2, p. 19, File No. 5065866) The MRI revealed among other things, a possible superior labral tear and supraspinatus and infraspinatus rotator cuff tear. (Ex. JE2, p. 20, File No. 5065866) This is the first record that discusses the work injury in conjunction with the shoulder pain.

On or about April 27, 2016, claimant was seen by Dr. Jameson who described the history of claimant's fall from an elevated height as including either a loss of consciousness or definite confusion, neither of which is supported by the medical

records immediately following the fall from the ladder. (Ex. JE2, p. 21, File No. 5065866; Ex. JE1, p. 6, File No. 5065866) Dr. Jameson also reports that claimant had excruciating pain in his right wrist. However, there was no mention of the right wrist at the initial visit, rather the reported pain was in the left wrist and left buttock. (Ex. JE1, p. 6, File No. 5065866) Dr. Jameson stated that it was not until the pain in his right wrist improved in severity that he "noticed ongoing right shoulder pain," which was after being removed from the sling following right wrist surgery. (Ex. JE2, p. 21, File No. 5065866) However, claimant reported a shoulder injury after falling while playing basketball and snowboarding on March 12, 2016, almost two weeks before the wrist surgery and being placed in a sling. Dr. Jameson recommended right shoulder arthroscopic labral repair versus biceps tenodesis, subacromial decompression, rotator cuff repair. (Id.)

On May 9, 2016, Dr. Bottke noted claimant's gradual improvement following the right wrist surgery. He had some stiffness which was expected to improve. (Ex. JE2, p. 28, File No. 5065866)

On May 18, 2016, claimant underwent shoulder surgery with Dr. Jameson. (Ex. JE2, p. 29, File No. 5065866) The surgery involved an arthroscopic labral debridement, biceps tenodesis, subacromial decompression and CA ligament release. (Id.)

Claimant had continued follow-up for the right wrist with Dr. Bottke and for the right shoulder with Dr. Jameson. Claimant advised Dr. Bottke, on August 9, 2016, considering his right wrist condition, that "[h]e feels that without the shoulder problem that he would be able to do his regular work activities." (Ex. JE2, p. 39, File No. 5065866) He was then released to return to regular duty concerning the wrist, although he was not expected to reach MMI for the wrist for another few months. (Ex. JE2, pp. 39, 43, File No. 5065866)

Claimant testified that his shoulder pain started at the time of the September 11, 2015 fall from the ladder, and that the fall while snowboarding in January 2016, and the fall while playing basketball in March 2016 were merely temporary aggravations of his shoulder injury. However, the medical records closest in time to the September 11, 2015 injury clearly do not mention right shoulder pain or symptoms of any kind. In fact, there is no mention of shoulder pain until March 12, 2016, and at that time, claimant only identified the fall while playing basketball and the fall while snowboarding as the basis for the shoulder pain.

On October 25, 2016, Dr. Bottke placed claimant at MMI for the wrist injury and assigned an impairment rating of 8 percent to the upper extremity due to loss of range of motion based on the Fifth Edition of the AMA Guides. Dr. Bottke identified in the physical exam portion of the office note, the limited degrees of range of motion, upon which the impairment rating was based. Dr. Bottke assigned no permanent restrictions for the wrist injury.

On December 17, 2016, claimant was seen by Dr. Jameson for an independent medical evaluation (IME), performed at the request of claimant's counsel. Dr. Jameson

had also been a treating physician concerning claimant's right shoulder. Dr. Jameson opined that on September 11, 2015, claimant sustained right shoulder internal derangement with labral tear in addition to the right wrist injury. (Ex. JE5, p. 9, File No. 5065866) Dr. Jameson stated that claimant did not notice that his shoulder was significantly painful after the September 11, 2015 injury until March 2016, when claimant was taken out of the sling following his right wrist surgery. Dr. Jameson stated that at that time he was compelled to seek medical treatment. (Ex. JE5, p. 8, File No. 5065866) However, I find that this is incorrect. The medical records and claimant's testimony indicate that he was not in a sling until after his wrist surgery, which occurred on or about March 24, 2016 and then he was only in a sling for about two weeks, until being placed in a removable brace by Dr. Bottke on April 6, 2016. Prior to his wrist surgery on March 24, 2016, claimant continued to work, albeit with restrictions. On March 12, 2016, almost two weeks before the wrist surgery, claimant sought medical treatment at Great River Medical Center for right shoulder pain and its "onset was just prior to arrival." (Ex. JE1, p. 8, File No. 5065866) The origin of the shoulder pain is described by Dr. Jameson himself in a later note on April 7, 2016 as occurring in relation to a fall while snowboarding in January and falling again on his right shoulder in March 2016 while playing basketball. Therefore, the first report of shoulder pain was nearly six months after the work injury and following a fall while playing basketball and a fall while snowboarding. Although claimant testified that these incidents of falling while snowboarding and playing basketball were merely temporary aggravations of his shoulder pain which had been present since the September 11, 2015 work injury, the medical records do not support this conclusion or the conclusion of Dr. Jameson.

Further, Dr. Jameson described the September 11, 2015 work injury as including a possible loss of consciousness, but definitely involving confusion after the fall. I find that this also is not supported by the medical records from September 12, 2015, which describes left wrist and left buttock pain and contains claimant's specific denial of any neck pain, and the notation that claimant "states he did not strike his head." (Ex. JE1, p. 3, File No. 5065866)

Although Dr. Jameson assigned an impairment rating of one percent permanent impairment for the right shoulder injury and related that impairment to the September 11, 2015 date of injury, in view of the obvious errors in Dr. Jameson's report, I give it very little weight.

I find that claimant has failed to establish by a preponderance of the evidence that his right shoulder complaints are related to the September 11, 2015 work injury based on the overwhelming medical record that contradicts any such causal connection.

I accept the impairment rating assigned by Dr. Bottke of eight percent permanent partial impairment to the right upper extremity as a result of the right wrist injury that occurred on September 11, 2015.

The parties have stipulated that the appropriate commencement date for permanent partial disability benefits concerning the right wrist injury is August 9, 2016. (Hearing Report, p. 1)

The parties have stipulated that the appropriate weekly workers' compensation rate in this file is $831.75. (Hearing Report, p. 1)

The parties have stipulated that defendants have paid 20 weeks of permanent partial disability benefits prior to the date of the hearing. (Hearing Report, p. 2) I find that claimant was underpaid weekly benefits prior to the hearing at the incorrect rate of $563.15. (Id.)

CONCLUSIONS OF LAW

File No. 5051861

1. Extent of Industrial Disability, October 15, 2014 work injury.

The parties have stipulated that the work injury that occurred on October 15, 2014 is an industrial disability, but they dispute the extent of industrial disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers' qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995).

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009).

I have found above for the reasons there stated that claimant has sustained industrial disability of 20 percent, which is 100 weeks.

File No. 5065866

1. Whether the stipulated injury of September 11, 2015 includes the right shoulder or is limited to the right wrist/arm, and the extent of any permanent partial disability. If the injury is limited to the right wrist/arm, the parties agree that the extent of permanent partial disability is eight percent.

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).

When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Having given very little weight to the report of Dr. Jameson, and considering the overwhelming medical evidence that claimant had no complaint of any shoulder pain until after falling while snowboarding and falling while playing basketball in March 2016 and reporting the same on March 12, 2016, about two weeks prior to being placed in a

sling following right wrist surgery, I conclude that claimant failed to carry his burden of proof that the shoulder injury is causally related to the September 11, 2015 work injury.

The parties have stipulated that if the shoulder is found not to be related to the work injury, that the appropriate functional impairment rating is 8 percent as determined by both Dr. Bottke and Dr. Jameson. I agree and conclude that claimant sustained 8 percent permanent partial disability to the right upper extremity as a result of the September 11, 2015 work injury, which is 20 weeks.

2. Medical Expenses.

Claimant seeks payment of medical expenses contained at Joint Exhibit 9, page 1, (File No. 5065866).

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

In this case, having found that the shoulder is not causally related to the work injury, I conclude that defendants are not responsible for payment of any previously unpaid medical expenses regarding the shoulder.

The parties have stipulated that the right wrist is causally related to the work injury, and I have found permanent impairment regarding the same. The defendants are responsible for payment of any medical bills contained in Joint Exhibit 9, page 1, which relate to treatment for the right wrist injury along with the initial emergency room visit of September 12, 2015.

3. Underpayment of TTD and PPD paid prior to the date of the hearing.

I have found above that claimant was underpaid weekly benefits prior to the hearing based on the information contained in the Hearing Report.

The Hearing Report indicates that claimant was paid weekly benefits prior to the hearing in the amount of $563.15 per week. The parties also stipulated that the correct weekly rate in this case is $831.75. Therefore, defendants are obligated to pay the accrued underpayment on all weekly benefits paid prior to the hearing.

4. Costs – regarding both File No. 5051861 and 5065866

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I exercise my

discretion and assess costs against the defendants in this matter in the amount of $100.00 for each filing fee for a total of $200.00.

ORDER

IT IS THEREFORE ORDERED:

File No. 5051861

Defendants shall pay claimant industrial disability benefits of one hundred (100) weeks, beginning on the stipulated commencement date of July 8, 2015 until all benefits are paid in full.

Defendants shall be entitled to credit for all weekly benefits paid to date. The parties have stipulated that defendants are entitled to a credit of sixty-nine point five seven one (69.571) weeks.

All weekly benefits shall be paid at the stipulated rate of eight hundred fifty-three and 14/100 dollars ($853.14) per week.

All accrued benefits shall be paid in a lump sum.

Defendants shall pay interest on any accrued weekly benefits pursuant to Iowa Code section 85.30.

File No. 5065866

Defendants shall pay claimant permanent partial disability benefits of twenty (20) weeks, beginning on the stipulated commencement date of August 9, 2016 until all benefits are paid in full.

Defendants shall be entitled to credit for all weekly benefits paid to date. The parties have stipulated that defendants are entitled to a credit of twenty (20) weeks. However, the parties agree that claimant was underpaid for weeks paid prior to the hearing. Therefore, defendants are obligated to pay to claimant the underpayment associated with all weekly benefits paid prior to the hearing.

All weekly benefits shall be paid at the stipulated rate of eight hundred thirty-one and 75/100 dollars ($831.75) per week.

All accrued benefits shall be paid in a lump sum.

Defendants shall pay interest on any accrued weekly benefits pursuant to Iowa Code section 85.30

Defendants shall reimburse claimant for out-of-pocket medical expenses, if any, set forth in Joint Exhibit 9, page 1, for any medical bills relating to the right wrist injury, including the September 12, 2015 bill from Great River Medical Center and shall pay,

reimburse, and/or otherwise satisfy said medical expenses contained in said exhibit, but not including bills related to the right shoulder.

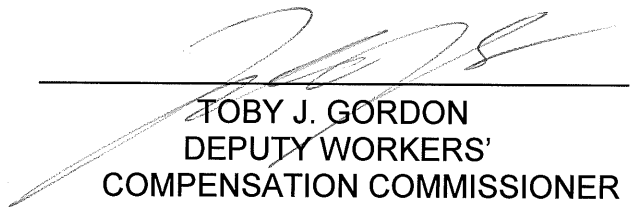
Costs

Defendants shall pay costs of two hundred and 00/100 dollars ($200.00).

Subsequent Reports

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

Signed and filed this 17th day of May, 2018.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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TJG/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.