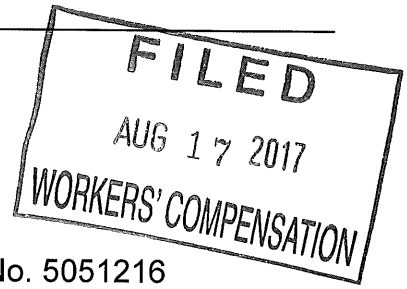
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



JAMES HORNER, Claimant, vs. ROQUETTE AMERICA, INC., Employer, and LIBERTY MUTUAL INSURANCE CO., Insurance Carrier, Defendants.	File No. 5051216 ARBITRATION DECISION Head Note Nos.: 1802; 1803; 1700; 1701; 2500

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, James Horner, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on September 8, 2015. Claimant alleged he sustained a work-related injury on December 31, 2013. (Original notice and petition.)

For purposes of workers' compensation, Roquette America, Inc., is insured by Liberty Mutual Insurance Company. Defendants filed their answer on September 25, 2015. A First Report of Injury was filed on March 3, 2014. Claimant amended his petition to add the alleged injury date of December 29, 2013.

The hearing administrator scheduled the case for hearing on September 13, 2016. The hearing took place in Des Moines, Iowa at the Iowa Workforce Development Building. The undersigned appointed Ms. Roxann Zuniga as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Defendants called Mr. Craig Potratz and Ms. Denise Larson as witnesses. The parties offered joint exhibits marked 1 through 24. All proffered exhibits were admitted as evidence in the case.

A transcript of the proceedings was filed on September 27, 2016. Post-hearing briefs were filed on October 7, 2016. The case was deemed fully submitted on that date.

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.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Although entitlement to temporary or healing period benefits cannot be stipulated, the parties agree, claimant was off work from April 17, 2015 through January 10, 2016;
3. The parties agree, if a permanent work injury is determined, claimant reached maximum medical improvement on January 11, 2016;
4. If claimant sustained a permanent disability; the case is an industrial disability one;

5. The parties agree, the weekly benefit rate is $777.47;

6. Defendants have waived any affirmative defenses they may have had available;

7. Prior to the date of the hearing, defendants paid claimant $11,032.66 in gross short-term disability benefits and defendants are entitled to a credit for the net amount against any weekly benefits that may be awarded;

8. The parties agree there has been an overpayment of temporary partial disability benefits and the parties will calculate the overpayment as a credit;

9. The parties agree certain costs that are detailed were paid by claimant.

ISSUES

The issues presented are:

1. Whether claimant sustained work injuries on December 29, 2013 and/or December 31, 2013;

2. Whether the alleged injury/injuries caused a temporary disability during a period of recovery;

3. Whether the alleged injury/injuries caused a permanent disability;

4. If there is a permanent disability, the extent of industrial disability to which claimant is entitled; and

5. Whether claimant is entitled to certain medical expenses pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant, and the other two witnesses at hearing, after judging the credibility of each person, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 47 years old and married. His daughter resides with claimant and his spouse in Montrose, Iowa. Claimant is right hand dominant. He graduated from high school in 1988. Claimant attended three semesters of college at Iowa State University. Then he dropped out of the university.

Claimant's previous work history includes working at Sheller Globe, Freuhauf Truck Trailers, and Trellex Morse. All of those positions involved production work. The jobs required physical labor on a daily basis. (Transcript, pages 12-13)

On October 28, 1996, claimant commenced employment with Roquette America, Inc. The company is engaged in the manufacture of various products after performing "corn wet milling." (Tr., p. 14) Initially, claimant was hired as a "feed loader" in the byproducts department at the feed house. (Tr., p. 14) Claimant testified he loaded trucks with cattle feed, gluten meal, loaded railcars with gluten meal, offloaded meal, and occasionally loaded steep water tanker cars. Claimant also assisted the feed operator and the gluten operator with tasks. (Tr., p. 14)

Claimant testified he was required to "beat on bins." Upon questioning from Mr. Pothitakis, claimant stated:

> THE WITNESS: I'm taking a sledgehammer and swinging physically and overhead and - - to get the feed unplugged to go to the conveyor to fill the trucks.

Q. (By Mr. Pothitakis) So you swing a sledgehammer with both arms?

A. Yes.

Q. It requires both arms to lift it?

A. Yes.

Q. And you'd hit overhead and head level and below head level?

A. Yes.

Q. Okay.

A. All three.

Q. How, when you would do that, how long would you have to do that aspect of the job?

A. It would depend on how long it was stuck. It could be five, 10 minutes. Could be hours.

Q. And repeatedly banging on the bin to get the feed to unstick?

A. Yes.

(Tr., pp. 15-16)

Claimant described the other duties he performed as a feed loader during his direct examination. Claimant had to flip doors, swing pipes, perform some crawling, and engage in pulling hoses and fine motor skills with small tools. (Tr., pp. 17-18)

After two or three years, the job changed. Claimant qualified for two jobs, the feed operator position and the gluten operator. (Tr., p. 20) Claimant retained the same duties he had as the feed operator. With respect to the gluten operator, claimant described his duties as:

A. You had filter cloth which was rotary vacuum filters you had to take care of. They would come off track. You had to physical pull on them to put them back on track and get them back on.

You also had to physically change them which required two people. We had to pull springs through, put everything together, a lot of pushing and pulling on that, a lot of cleanup work, shoveling, and hose.

There was still digging out conveyors because it would plug up, some hammering.

Q. (By Mr. Pothitakis) What's digging out conveyors?

A. If you have a stoppage and it backs up the conveyor and packs them full, you would have to physically with crowbars, hammers, railroad bars, broom sticks, whatever you could do dig it out and free the stoppage and get everything moving again.

(Tr., pp. 21-22)

Claimant held the feed operator and the gluten operator positions from approximately 1999 until 2010. Then claimant switched to the dextrose department to become a Refinery D operator on July 19, 2010. (Tr., p. 26) Claimant testified the department manager requires the employee to operate machinery, employ a dead-blow hammer to unplug hoses, load tanker trucks with syrup via hoses and pumps, and to load machinery with empty bags. Claimant also testified he is frequently required to lift 50 or 100 pound feed bags with his upper extremities. (Tr., p. 29)

Joint Exhibit 16 is the Job Analysis for the Refinery D (Dextrose) Operator at Roquette America, Inc. On page 16-2, the company details the daily lifting and carrying requirements of the job. They are:

*Lift 0-10 pounds Occasionally in L and Frequently in D. Height lifted is 48 inches. Carry 0-10 pounds Occasionally in L and Frequently in D. Distance carried is 200 feet in L and 20-30 feet in D.

*Lift 11-25 pounds Occasionally in L and Frequently in D. Height lifted is 48 inches. Carry 11-25 pounds Occasionally in L and Frequently in D. Distance carried is 200 feet in L and 30 feet in D.

*Lift 26-50 pounds Never in L and Occasionally in D. Height lifted is 48 inches. Carry 26-50 pounds Never in L and Occasionally in D. Distance carried in L is Not Applicable and is 20 feet in D.

*Lift 51-75 pounds Never in L and Occasionally in D <u>WITH ANOTHER PERSON ASSISTING</u>. Height lifted is 48 inches. Never carry 51-75 pounds in D.

*Heaviest item Lifted and/or Carried INDEPENDENTLY is a bag of product weighing 50 pounds for 20 feet.

*Push/Pull: Align 50-100 pound bags of product on a conveyor.

*Gripping: Grip to lift/carry 50 pound bags of product.

(Exhibit 16, page 2) (Ex. 24, p. 3)

Craig Potratz, the interim manager at the refinery D plant, testified Exhibit 24 was an accurate description of claimant's job duties. (Tr., p. 89) Ms. Denise Larson testified claimant did not have to use a sledgehammer once or twice an hour when he was working at Roquette from 1996 through 2010. (Tr., p. 99)

Claimant testified a new machine was installed in the refinery D plant in the fall of 2013. There were problems regulating the machine so it would operate properly. As a consequence, claimant testified, he was required to manipulate or pick up 50 to 100 pound bags. Claimant also testified various pipes clogged and he had to employ a small dead-blow hammer on the pipes to ensure the pipes were clear of debris.

During the same time period, claimant experienced some problems with his right arm and right shoulder. (Tr., p. 34) Claimant described his problems as follows:

> A. Pain felt, felt popping in all three places; my wrists, elbow and shoulder. I had like a snapping in my right wrist and muscle pain.
>
> Q. (By Mr. Pothitakis) Okay. That's all in your right arm and right shoulder?
>
> A. Yes.
>
> Q. Prior to the fall of 2013, had you ever had that - - those problems with your right upper extremity that did not go away?
>
> A. No, I had not.
>
> Q. You indicated previously in your testimony you had some problems in pain and discomfort in your arm, but it would go away.
>
> A. Yes.
>
> Q. Okay. And in prior to the fall of 2013, would you agree with me that any of these temporary problems you had with pain in your right arm or shoulder, that those had no impact or effect on your ability to do your job?
>
> A. No, they did not.
>
> Q. Did you - - once you had this popping in your wrist and the problems with your shoulder and right arm in the fall of 2013, did you report it to your employer?
>
> A Not initially, no.
>
> Q. Okay. Why not?

A. I thought it would go away.

Q. Okay.

A. - - like it had before.

Q. Did it go away?

A. No.

Q. And did you ultimately report it?

A. Yes.

Tr., pp. 34-36)

Claimant eventually reported his pain to management on December 31, 2013. The company authorized treatment with Robert L. Gordon. M.D., MSPH, at MOHA On-Site Physician Services. The initial appointment occurred on January 8, 2014. Claimant reported to Dr. Gordon:

> He reports to me that in late December of 2013, he was involved in transferring a fifty-pound bag of product and noted pain of his right shoulder, right elbow, and right wrist. With regards to his right shoulder, there is no functional limitation. He will not [sic] some crepitus at times but no functional limitation. With regards to his right wrist, he will note a periodic sensation as if the tendon is rolling over his right wrist, on the ulnar aspect dorsally. This is sporadic. It is painful at times and at other times not when he has this sensation.
>
> **His big issue today is his right lateral elbow.** He does note distinct pain of his right lateral elbow and has difficult performing activities with his right lateral elbow. He does have difficulties performing activities at home such as cutting firewood, performing regular household chores, and does also note pain while at work performing jobs that require wrist extension or grasping. (Emphasis added)
>
> Otherwise, he denies any pain of his neck or numbness or tingling down his right upper extremity. He is not currently utilizing any medication for his current symptomatology.

(Ex. 1, p. 1)

Dr. Gordon diagnosed claimant with the following conditions:

1. History of right shoulder strain, no functional limitation.
2. Right lateral epicondylar pain, most consistent with epicondylitis.

3. Patient reported history of periodic pain and sensation of tendon rolling over the distal ulna. Question subluxation of extensor carpi ulnaris tendon over the distal ulna. This is periodic. This is not function-limiting.

(Ex. 1, p. 2)

Dr. Gordon ordered Naproxen, and a home exercise program. Claimant was advised to schedule another appointment in two weeks. (Ex. 1, p. 2) Later Prednisone was prescribed. (Ex. 1, p. 6) A Bandit strap was ordered for claimant to wear on his right forearm. (Ex. 1, p. 6) Effective February 21, 2014, claimant was placed on light duty work with limited use of the right upper extremity and limited repetitive use of the right upper extremity. (Ex. 1, pp. 8-9) Claimant was also required to have assistance with loading the bag magazine. (Ex. 1, p. 9)

On February 26, 2014, Dr. Gordon performed a right lateral epicondylar corticosteroid injection. (Ex. 1, p. 11) The patient tolerated the procedure. (Ex. 1, p. 11) Claimant was advised not to use his right upper extremity at work. (Ex. 1, p. 11) Claimant was restricted from lifting more than five pounds with his right upper extremity and from performing activities above shoulder height with the right upper extremity. (Ex. 1, p. 15)

Magnetic Resonance Imaging (MRI) was conducted of the right shoulder on March 28, 2014. Pil Kang, M.D., interpreted the results as follows:

IMPRESSION:
1) ACROMIOCLAVICULAR JOINT DEGENERATIVE CHANGES.
2) TENDINOSIS OF THE INFRASPINATUS TENDON WITH A POSSIBLE RIM RENT TEAR OF THE POSTERIOR MARGIN OF THE TENDON.
3) SUBSCAPULARIS TENDINOSIS WITHOUT DEFINITE TEAR.

(Ex. 10, p. 2) Dr. Gordon did not question whether the conditions were work-related.

Eventually, Dr. Gordon referred claimant to Brent Woodbury, M.D., at Fort Madison Physicians and Surgeons. (Ex. 2, p. 1) Claimant received a right AC joint injection with Kenalog. (Ex. 2, p. 1) Physician's assistant, Paul Ostby, diagnosed claimant with: "right wrist ecu tendonopathy, [sic] right shoulder impingement/tendonopathy [sic]." (Ex. 2, p. 2) Physical therapy was ordered. (Ex. 2, p. 3) Mr. Ostby ordered NCV/EMG testing. The results showed:

NCV/EMG study is consistent with moderate right Carpal Tunnel Syndrome & Rt cubital tunnel syndrome.

(Ex. 12, p. 1) Additional injections were required. (Ex. 2, p. 7)

On June 26, 2014, Dr. Woodbury diagnosed claimant with:

> Carpal and cubital tunnel syndrome/ snapping ECU/right shoulder tendonopathy.

(Ex. 2, p. 22) The physician recommended a referral to a hand specialist. (Ex. 2, p. 22)

On July 28, 2014, James R. Williams, M.D., examined claimant per a referral from Dr. Woodbury. (Ex. 3, p. 1) Dr. Williams is an orthopedic surgeon who practices in Peoria, Illinois. He diagnosed claimant with:

> Carpal Tunnel Syndrome
>
> Lesion of Ulnar Nerve
>
> Lateral Epicondylitis Elbow Region.

(Ex. 3, p. 5)

Dr. Woodbury indicated in his clinical notes for the same date:

> We discussed his MRI results which show tear/defects involving the TFCC near the attachment to the ulnar styloid process and partial tear/tendinosis involving the common extensor tendon. We also discussed his nerve study on 6/23/14 by Dr. Jugal Raval showed moderate right carpal and cubital tunnel. We discussed right wrist arthroscopy, right cubital tunnel, right carpal tunnel and right lateral epicondylectomy. We discussed that operation and recovery. We discussed that the surgery will not change his shaking in his hand. Surgical treatment was described to the patient. No guarantee was made as to the success of the procedure. The specific complications of the procedure and the general risks of surgery were described in detail. The patients [sic] questions were answered.

(Ex. 3, p. 5)

On December 17, 2014, Dr. Williams issued a report based on a job video produced by the employer. Dr. Williams was asked to provide a medical opinion concerning whether claimant's medical conditions were the result of claimant's work. Dr. Williams opined:

> All I have to say is looking at the initial encounter note with Mr. Horner which was done on 07/28/2014, Mr. Horner reported to me his date of injury was 12/31/2013. He reported he was moving a 50-pound bag of product. Reported symptoms in his right shoulder, elbow and wrist. He at no time said that he was doing any type of activity which involved any type of hammering, any significant vibration, just lifting at [sic] 50-pound bag of

> product. I do not see, in any way, that lifting that 50-pound bag of product would result in carpal nor cubital tunnel syndrome nor to any TFCC-type injury nor any injury which would result in his need for surgery being a right wrist scope and debridement, a lateral epicondylectomy, a carpal tunnel release and/or a cubital tunnel release.

(Ex. 7, p. 2)

Dr. Williams reiterated his opinion on February 24, 2015. In a one sentence opinion, Dr. Williams wrote:

> I do not feel Mr. Horners [sic] job duties outlined on the job video caused his R upper extremity complaints.

(Ex. 7, p. 3)

In answer to a letter written by claimant's counsel, Dr. Williams modified his causation opinion to some degree. He wrote:

> After reviewing this additional information outlining his work duties dating back several years all I can say for sure is that the job video that I had reviewed previously did not show these types of activities and I did not feel that those particular job duties brought about his upper extremity complaints. If he indeed did do the reported activities outlined in the first paragraph of this letter and if they were done in a repetitive manner and without significant recovery time in between activities then it is perceivable those activities would be contributory to his development of his carpal, cubital and ECU tendonitis.

(Ex. 7, p. 6)

On June 7, 2016, Dr. Williams once again modified his opinions on causation. He opined:

> I have received a letter from you dated May 2, 2016, regarding Mr. James Horner versus Roquette American Incorporated. As you know, I opionioned [sic] that based upon Mr. Nicholas Pothitakis' description of Mr. James Horner's work injuries, Mr. Horner's upper extremity injuries may have been causatively related to his employment at Roquette if those activities were done in a repetitive manner and without significant recovery time in between activities.
>
> I have now received an affidavit signed by Denise Larson on April 21, 2016, where she described work duties that she personally reviewed Mr. Horner perform when she was in a supervisor roll in Luten [sic] from that time in 2010, and then Mr. Luten [sic] in the part of 2010 was moved to a new position at Roquette. She also apparently performed the job duties

> and was a qualified feed loader starting in 2006, so knows those job duties also. Her job duty description is obviously is [sic] very different. She does not describe work as a highly repetitive nor highly forceful degree, and in light of that, if indeed this job duty affidavit is correct, as described by Denise Larson, obviously this would change my opinions in regards to the possible aggravation caused by Mr. Horner's work at Roquette, and obviously in this regard, I would opinion that those job duties were not either aggravated and/or causative to the conditions of which I saw Mr. Horner for.

(Ex. 7, p. 8)

Dr. Woodbury prepared a written statement with respect to the cause of claimant's upper extremity problems. Dr. Woodbury wrote in relevant portion:

> 4. I understand that Mr. Horner performed repetitive upper extremity activities in his work at Roquette. I understand that this work included the use of sledge hammers for several years as well as various other upper extremity activities. I understand that over the past couple of years, he has been doing work which required him to lift bags of product that weigh 50 pounds and greater. I understand that on some days, he had to do dozens of these bags.
> 5. I understand that he began suffering from upper extremity problems associated with his work activity.
> 6. It is my opinion that the condition for which I have provided him care and treatment and for which I set forth a diagnosis related to repetitive upper extremity use. I believe that within a reasonable degree of medical certainty that Mr. Horner's right upper extremity conditions are a result of his work activities. His work activities were a substantial contributing factor to the injury and condition for which I have provided him care and for which I believe he needs surgical intervention.
> 7. A person would not typically develop these types of problems by normal home activities. The lifting, reach, grabbing, and upper extremity manipulation with respect to the hand and wrists, similar to the activities Mr. Horner undertook at work, is what would result in these types of conditions.
> 8. The opinions I set forth above are within a reasonable degree of medical certainty, that is, more likely than not or 51% or greater certainty.

(Ex. 5, pp. 1-2)

Dr. Woodbury issued a subsequent report with respect to causation after he had received a letter from defense counsel. The letter did not really change Dr. Woodbury's opinion relative to the cause of claimant's right upper extremity conditions. (Ex. 5, p. 4)

Because defendants denied liability for claimant's injuries, claimant selected his own treating surgeon. Christopher Dupuis, M.D., an orthopedic surgeon in Keokuk, Iowa, performed two surgeries. On July 2, 2015, Dr. Dupuis performed:

1. Right shoulder arthroscopy with acromioplasty, bursectomy and resection arthroplasty distal clavicle/acromioclavicular joint.
2. Mini-open long head biceps tendon tenodesis.
3. Open carpal tunnel release.
4. Subcutaneous anterior transposition ulnar nerve, right elbow.

(Ex. 11, p. 3)

Subsequent to the surgery, claimant was placed in a sling. He tolerated the procedure well. (Ex. 11, p. 5)

The second surgery Dr. Dupuis performed occurred on September 15, 2015. The surgeon performed:

1. Percutaneous tenotomy of common extensor tendon right elbow using ultrasound guidance to remove pathologic tendon.
2. Extensor carpi ulnaris stabilization at right wrist (Spinner-Kaplan procedure)

(Ex. 11, p. 8)

On September 21, 2015, Dr. Dupuis issued a written statement regarding the medical cause for claimant's right upper extremity and shoulder problems. The surgeon indicated in part:

5. Unfortunately for Mr. Horner, he has significant problems with his right upper extremity which could only be repaired by surgical intervention. I relate this condition to his work activities at Roquette.
6. It is my opinion, within a reasonable degree of medical certainty, that Mr. Horner's work activities at Roquette are a substantial contributing factor to his upper extremity conditions and need for surgical interventions that I performed.
7. I would state that a person would not be expected to develop these types of problems by normal home activities. The lifting, reaching, grabbing, hammering, and upper extremity manipulation, similar to the activities that Mr. Horner undertook at work, are what results in these types of conditions and has resulted in these conditions for Mr. Horner.
8. The opinions I set forth above are within a reasonable degree of medical certainty, that is, more likely than not or 51% or greater certainty.

(Ex. 6, p. 1)

On March 28, 2016, Dr. Dupuis diagnosed claimant with the following conditions:

Carpal tunnel syndrome, right upper limb

Cubital tunnel syndrome

Lesion of ulnar nerve, right upper limb

Tennis elbow

Lateral epicondylitis, right elbow

AC ARTHROSIS/OA TRAUMATIC/CHRONIC

(Ex. 4, p. 58)

Dr. Dupuis also provided a permanent impairment rating for claimant's various conditions. The rating totaled 15 percent to the right upper extremity or 9 percent to the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, page 439 at Table 16-3. (Ex. 4, p. 58) This was the only permanent impairment rating provided as evidence in the case.

The parties stipulated that if permanency is found, the commencement date is January 11, 2016. That is the date claimant returned to work without any work restrictions imposed. Claimant is currently working at Roquette America, Inc. He is earning more money per hour than he earned on the date of his alleged work injury. According to Mr. Potratz, claimant earns a base rate of $21.96 per hour, plus a $2.00 per hour tier difference. On his designated shift, claimant is number 2 in seniority. He is able to accept all the voluntary overtime he wishes to work. Claimant testified he does not work as much voluntary overtime as he did prior to the date of his work injury. Claimant explained his right arm hurts too much if he works overtime hours. (Tr., p. 51) He testified he is able to perform his duties at his present employer. (Tr., p. 52) He is not receiving any accommodation in the workplace. (Tr., p. 94)

For the most part, the undersigned finds claimant to be a credible witness. However, this deputy does believe claimant exaggerated the amount of time claimant had to swing the sledgehammer. It is hard to imagine claimant would swing a sledgehammer for hours at a time. It is probably more accurate to say, when claimant had to swing the sledgehammer, it was just several times per day.

This deputy does find claimant's testimony about equipment failures to be accurate. Machinery just does not always perform in the fashion it was designed to operate. It is the experience of the undersigned; there are always glitches in any system. Claimant's testimony about lifting 50 to 100 pound bags due to malfunctioning equipment seems plausible. Even in a governmental office there are often equipment failures.

With respect to the affidavit and testimony of Ms. Denise Larson, not much weight is accorded to that evidence. Ms. Larson was not working with claimant in 2013 when there was the equipment failure. Ms. Larson had no firsthand knowledge about the problems created by the company's inability to maintain new machinery. Her only knowledge of claimant's activities was the work he performed prior to 2010.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of tact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

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 and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Claimant met his burden of proof. He sustained an injury that arose out of and in the course of his employment on December 31, 2013. The preponderance of the evidence supports the conclusion the injury is a proximate cause of the disability on which the claim is based.

There is the opinion of Dr. Woodbury. He related claimant's conditions to his work activities. Those opinions were detailed in Joint Exhibit 5, page 1. Even after Dr. Woodbury was contacted by defendants and asked to modify his opinion on causation, the surgeon held steadfast. He was not persuaded by the contents of Ms. Larson's affidavit. Dr. Woodbury still maintained:

> Either way, my opinion that work contributed or exacerbated his condition would apply even with a lower level of activity. Most notably, this would be relevant to his carpal and cubital tunnel. His ECU instability can occur, or significantly contribute to, or be exacerbated, from the freeloader work with the sledgehammer-even if this is a couple of swings every couple days.

(Jt. Ex. 5, p. 4)

Dr. Dupuis also related claimant's various conditions to claimant's work duties. According to Dr. Dupuis, claimant's work activities were a substantial contributing factor to claimant's upper extremity conditions. (Ex. 6, p. 1) The opinions of Dr. Dupuis are accorded the greatest weight as he was the treating surgeon who performed two surgeries. Claimant had many appointments with Dr. Dupuis commencing on May 27, 2015 and concluding on or about March 28, 2016. Dr. Dupuis had more contact with claimant than any of the other physicians involved in the case. Claimant treated with Dr. Dupuis over the course of ten months.

Dr. Williams is the physician who held the contrary opinion with respect to medical causation. He saw claimant on only two occasions, July 28, 2014 and December 15, 2014. However, Dr. Williams based his opinions on the job video which was presented to him by defendants. Claimant testified the video did not depict all the duties claimant performed on the job. As a consequence, Dr. Williams' opinions were based on incomplete facts. His opinions are not binding on the undersigned.

Since claimant has established there is medical causation, he is entitled to weekly benefits for his healing period. The parties stipulated claimant was off work from April 17, 2015 through January 10, 2016. This is a period of 38.286 weeks. Defendants shall pay unto claimant weekly benefits for this period at the rate of $777.47 per week. Defendants shall take credit for the net amount of all short-term disability benefits

previously paid to claimant, and any temporary partial disability benefits that may have been overpaid.

Claimant sustained an injury to the body as a whole per the opinion of Dr. Dupuis. Not one physician contradicts Dr. Dupuis. Claimant is entitled to have his condition calculated by the industrial method.

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, 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, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. 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).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Dr. Dupuis rated claimant as having a 15 percent impairment to the right upper extremity or a 9 percent impairment to the body as a whole. Claimant is not working under any work restrictions. His job duties are the same now as they were on the date of his work injury. Claimant earns more money presently than he did on the date of his injury. He testified he is not working as much overtime as he did prior to the work injury because of pain and discomfort in his right shoulder and arm. Claimant is performing all of his duties without any accommodation in the workplace. After considering all of the factors involving industrial disability, it is the determination of the undersigned; claimant is entitled to a permanent partial disability in the amount of 15 percent. Defendants shall pay unto claimant seventy-five (75) weeks of permanent partial disability benefits at the weekly benefit rate of $777.47 per week. Said benefits shall commence from January 11, 2016.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

The next issue to determine is the matter of medical benefits pursuant to Iowa Code section 85.27. 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 1975).

The medical expenses are detailed in joint exhibit 17. Defendants are liable for the same. Claimant shall be reimbursed for out of pocket expenditures as well.

The final issue is costs to litigate.

Iowa Code section 86.40 states:

Costs. All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

Costs. Costs 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

The following costs are assessed to defendants:

Filing fee $100.00

Service fee (Unknown)

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant a total of seventy-five (75) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of seven hundred seventy-seven and 47/100 dollars ($777.47) commencing from January 11, 2016.

Defendants shall pay unto claimant thirty-eight point two eight six (38.286) weeks of healing period benefits for the period from April 17, 2015 through January 10, 2016 and said benefits shall be paid at the rate of seven hundred seventy-seven and 47/100 dollars ($777.47) per week.

Defendants shall take credit for the net amount of all short-term disability benefits paid to claimant as well as any temporary partial disability benefits that may have been paid to claimant.

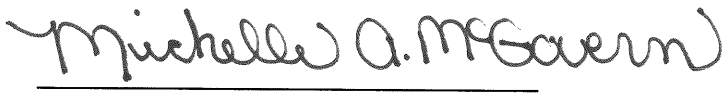
Accrued benefits shall be paid in a lump sum, together with interest, as provided by law.

Defendants shall pay all medical expenses as detailed in joint exhibit 17, including any put of pocket expenses claimant may have incurred.

Costs are assessed to defendants as detailed in the body of this decision.

Defendants shall file all reports as required by law.

Signed and filed this 17th day of August, 2017.



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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.