BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

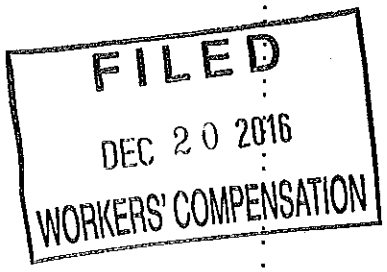
RANDY A. SANDS,

Claimant,

vs.

CITY OF SIOUX CITY,

Employer,
Self-Insured,
Defendant.



File Nos. 5049666, 5050047

ARBITRATION

DECISION

Head Note Nos.: 1100; 1802; 1803
1804; 4000

STATEMENT OF THE CASE

Claimant, Randy A. Sands, filed petitions in arbitration seeking workers' compensation benefits from City of Sioux City, self-insured employer, as defendant, as a result of alleged injuries sustained on February 1, 2012 and October 4, 2013. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on January 27, 2016, in Sioux City, Iowa. The record in this case consists of claimant's exhibits 1 through 8 and 10 through 22; defendant's exhibits A through I, K through S, U, and W; and the testimony of the claimant, Donald Trometer, Douglas Young, and James Miller. The parties were given the option of submitting post-hearing briefs; the matter is considered fully submitted on June 8, 2016.

ISSUES

In File No. 5049666 (Date of Injury: February 1, 2012 Right Carpal Tunnel Syndrome):

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on February 1, 2012 which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of permanent disability;
3. The extent of permanent disability to the right arm;
4. The commencement date for permanent disability benefits;
5. Whether claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13 and if so, how much; and
6. Specific taxation of costs.

In File No. 5050047 (Date of Injury: October 4, 2013 Left Carpal Tunnel Syndrome; Cervical Spine):

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury on October 4, 2013 which arose out of and in the course of his employment;
2. Whether the alleged injury is a cause of temporary disability;
3. Whether claimant is entitled to temporary disability benefits from May 29, 2014 through August 20, 2014;
4. Whether the alleged injury is a cause of permanent disability;
5. The extent of claimant's permanent disability, including whether a scheduled member or industrial disability and whether or not claimant is an odd-lot employee;
6. The commencement date for permanent disability benefits;
7. Whether defendants are responsible for claimed medical expenses;
8. Whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27;
9. Whether claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13 and if so, how much; and
10. Specific taxation of costs.

STIPULATIONS

The parties submitted one hearing report for both files at issue. The stipulations of the parties in the hearing report are incorporated by reference in this decision and are restated as follows:

1. The existence of an employer-employee relationship at the time of the alleged work injury.

2. If defendant is liable for the alleged October 4, 2013 injury, claimant is entitled to temporary disability benefits for the period claimed.

3. Although claimant's entitlement to temporary disability benefits cannot be stipulated, claimant was off work during the claimed period.

4. At the time of the alleged February 1, 2012 injury, claimant's gross earnings were $896.00 per week and claimant was married and entitled to two exemptions.

5. At the time of the alleged October 4, 2013 injury, claimant's gross earnings were $927.00 per week and claimant was married and entitled to two exemptions.

6. With reference to the itemized list of disputed medical expenses: although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendant is not offering contrary evidence.

7. Defendants are entitled to credit for payment of medical/hospitalization expenses in the amount of $70,683.06.

FINDINGS OF FACT

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

Claimant's testimony was largely consistent as compared to the evidentiary record and his deposition testimony; particularly given claimant's limited intellectual abilities. He was extremely personable, demonstrated excellent eye contact, and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 60 years of age at the time of hearing. He resides in Sioux City, Iowa with his wife; he is the father to two adult children. (Claimant's testimony; Ex. 22, Depo. Tr. p. 7) Claimant's academic records were entered into evidence and reveal claimant participated in a special education program. He also repeated two grades. (Claimant's testimony; Ex. 13) He graduated from high school with a diploma in 1975; however, claimant's junior and senior years consisted of vocational training. (Claimant's testimony; Ex. 19, pp. 3-4) The records further noted I.Q. testing in 1971 and 1972 resulted in scores of 72 and 81, respectively. (Ex. 13, p. 3; Ex. 14, p. 1)

Claimant subsequently earned his CDL, with certain endorsements; however, it took three attempts to pass the written test. He also holds certifications in forklift and scissor lift operation. (Claimant's testimony; Ex. 19, p. 3; Ex. 20, p. 30) Claimant owns a computer, but lacks familiarity with use of word processing or email; he did not utilize a computer in his employment history. (Claimant's testimony)

Claimant's work history consists of assembly line, welding, meatpacking- various positions, farming, road grader operator, motorcycle repair, automobile and equipment mechanic, painting, forklift operation, and repossession of vehicles. (Claimant's testimony; Ex. 19, p. 19-24)

Claimant began work at defendant in January 2006 as an Automotive Mechanic 1, with a starting hourly wage of $16.1560. (Ex. 18, p. 47) Defendant's job description for the position of Automotive Mechanic 1 requires regular lifting of 25 pounds; occasional lifting of 50 pounds; frequent use of the hands and fingers; frequent reaching with hands and arms; and the ability to quickly move hands and arms to grasp, manipulate or assemble. (Ex. A, p. 1) At the time of his hire, claimant passed a Department of Transportation physical and a separate preemployment physical which

cleared him to perform the essential functions of his position. (Ex. 1, pp. 1-4) Claimant testified the physical demands listed on the job description are not accurate, as he was required to manipulate parts weighing 200 pounds and lift tires weighing 100 pounds. (Claimant's testimony)

Defendant has a policy requiring employees to report an injury on the date it occurred and complete a report of injury paperwork within 24 hours. (Ex. B, p. 1)

Claimant's past medical history includes chiropractic care from James Bjork, D.C., from 1996 to 2013. The number of annual visits varied from 3 to 30 per year; the corresponding notes are handwritten and largely indecipherable. (Ex. M, pp. 2-8)

In 2009, claimant underwent right shoulder arthroscopy with Ryan Meis, M.D. Dr. Meis placed claimant at maximum medical improvement (MMI) on October 23, 2009 without restrictions. (Ex. 2, pp. 1, 69) In February 2010, claimant underwent a right shoulder subacromial injection to treat right shoulder pain which developed after lifting a truck part at work. Claimant was released from care without restrictions approximately two weeks later. (Ex. 2, pp. 3-5, 11)

In January 2011, claimant returned to Dr. Meis with complaints of decreased right shoulder function and right finger numbness and tingling. Dr. Meis ordered an MRI of claimant's right shoulder and EMG of claimant's right upper extremity. He ultimately ordered physical therapy for right shoulder weakness. (Ex. 2, pp. 6-7) In May 2011, claimant was placed at MMI, without restrictions, relative to his right shoulder. (Ex. 2, pp. 15-16) Dr. Meis opined claimant sustained permanent impairment of 6 percent whole person. (Ex. 2, p. 82)

Due to continued symptomatology, in May 2011, claimant underwent a right upper extremity EMG and MRI of the cervical spine. (Ex. 2, pp. 78, 80) Dr. Meis referred claimant to Matthew Johnson, M.D., a physician board certified in neurological surgery. (Ex. 2, pp. 87, 115) In June 2011, claimant presented to Dr. Johnson, who opined claimant's cervical spine MRI showed spondylosis at C3-4 and less distinctly at C4-5, C5-6, and C6-7. (Ex. 2, p. 19) He recommended pain management consultation and claimant ultimately underwent an epidural flood in July 2011. (Ex. 2, p. 20; Ex. 3, p. 1; Ex. K, p. 1) Dr. Johnson opined claimant received good relief with the C3-4 epidural flood and opined he suspected claimant's residual neck and shoulder symptoms were related to C3-4 spondylosis. (Ex. 2, p. 87)

In August 2011, claimant was seen at Mercy Business Health for complaints arising from an injury wherein claimant felt a pop in his neck while changing a tire. He was assessed with a cervical strain and spasms. Claimant was treated conservatively with use of medications, heat, and work restrictions. (Ex. 1, p. 6) Claimant later followed up with Rodney Cassens, M.D., who assessed a cervical strain and continued the conservative care regimen. (Ex. 1, p. 7) The following month, claimant returned to Dr. Cassens, who noted claimant had suffered with a transient flare of a cervical disc injury and had returned to baseline. He placed claimant at MMI on September 6, 2011

and recommended claimant follow up with Dr. Johnson for the underlying disc injury. (Ex. 1, p. 8)

In December 2011, claimant returned to Dr. Johnson for evaluation. Dr. Johnson noted claimant complained of cervical symptoms following an injury at work while servicing a garbage truck. He noted symptoms of neck pain and radiation down the right upper extremity to the digits of the hand. Dr. Johnson opined claimant's MRI showed multilevel cervical spondylosis and a past EMG showed mild right carpal tunnel syndrome. Dr. Johnson opined the majority of claimant's symptoms were attributable to the carpal tunnel syndrome; claimant represented if his arm symptoms would subside, claimant could tolerate and work with the existing neck pain. Dr. Johnson recommended a right open carpal tunnel release. (Ex. L, p. 1)

In January 2012, claimant was treated at Mercy Business Health after he sustained a laceration when a jack stand broke, resulting in a fire truck falling to the ground. Claimant complained of a laceration to his back and pain in his back and neck. Claimant was assessed with lumbar and cervical spasms and treated conservatively with medications and work restrictions. (Ex. 1, pp. 9-10) Dr. Cassens released claimant at MMI within one weeks' time. (Ex. 1, pp. 11, 13)

Due to Dr. Johnson's recommendation for right open carpal tunnel release, claimant reported an injury to defendant and defendant assigned an injury date of February 1, 2012. (Ex. D, p. 1)

Dr. Johnson performed right open carpal tunnel release on March 5, 2012. (Ex. 3, p. 2) On March 13, 2012, claimant returned to Dr. Johnson in follow up of right open carpal tunnel release and reported resolution of numbness, pain, and tingling. (Ex. 2, p. 28) Dr. Johnson ultimately allowed claimant to return to work light duty and on April 9, 2012, without restrictions. (Ex. 2, pp. 30, 72-73) Defendant's records reveal claimant was paid temporary disability benefits from March 6, 2012 through April 6, 2012. (Ex. 21, p. 1)

On June 26, 2012, Dr. Johnson placed claimant at MMI and released claimant without restrictions, to return to clinic as needed. (Ex. 2, p. 34)

Claimant testified on October 4, 2013, he was seated below an excavator, performing a service. While he was reinstalling a steel pan weighing 30 to 40 pounds, the bolts popped out and the pan fell, striking claimant in the head. (Claimant's testimony) Claimant subsequently presented to a machinery supply company and received the specifications of the pan which struck him. The information received from the sales representative reveals the pan weighed 31 pounds. (Ex. 20, pp. 9-11) Claimant testified 31 pounds was the weight of a clean pan, but a pan with accumulated grease and dirt weighed greater than this amount. (Claimant's testimony)

Douglas Young, automotive mechanic 2 for defendant, testified at evidentiary hearing. Mr. Young served as claimant's supervisor. He testified it was possible the pan referred to by claimant could weigh 40 pounds, if dirty. (Claimant's testimony) Mr. Young's testimony was clear and consistent with the evidentiary record. His demeanor gave the undersigned no reason to doubt his veracity. Mr. Young is found credible.

Following the work injury, claimant testified he initially sought care with his chiropractor, in hopes adjustments would resolve his symptoms. However, his symptoms did not resolve and continued to worsen as he worked. (Claimant's testimony) As a result, on October 9, 2013, claimant presented to Siouxland Community Health and was seen by his personal provider, David Faldmo, PAC. Claimant complained of left shoulder pain; no specific injury was noted. Mr. Faldmo assessed shoulder pain and issued prescriptions for hydrocodone and Flexeril. (Ex. 6, pp. 2, 4; Ex. I, p. 2)

Following his evaluation with Mr. Faldmo, on October 10, 2013, claimant reported the occurrence of an alleged work injury on October 4, 2013 to defendant. (Ex. E, p. 1)

On October 15, 2013, claimant was referred to Mercy Business Health for evaluation with Dr. Cassens. Claimant complained of pain of the left side of his neck, left upper back and left arm, as well as paresthesias to the left thumb and index fingers. Claimant reported his symptoms began after being struck by a metal plate on the head, neck, upper back, and shoulder region on October 4, 2013; he reported the pain later worsened. Dr. Cassens assessed strains of the left trapezius and paraspinal musculature, with left upper extremity C6 radiculopathy. A course of conservative treatment was begun, consisting of ibuprofen 800 mg, cyclobenzaprine, hydrocodone per his personal provider, and physical therapy. Claimant was permitted to return to work under restrictions of a 10-pound lift; no bending, squatting, twisting, or reaching above shoulder level; and occasional gripping, pinching, pushing or pulling. (Ex. 1, p. 12; Ex. F, p. 1) Dr. Cassens subsequently ordered an MRI of claimant's cervical spine, which was undergone on October 23, 2013. (Ex. 1, p. 16; ex. 2, pp. 89-90; Ex. 7, pp. 1-2)

Claimant returned to Dr. Cassens on October 28, 2013. Dr. Cassens opined claimant's MRI of October 23, 2013 showed C5-6 minimal right and moderate left foraminal narrowing with a small left foraminal disc protrusion and osteophyte formation. He opined the MRI findings correlated with claimant's examination findings. Dr. Cassens assessed degenerative narrowing of left C5-6 neural foramen, "transiently aggravated" and resulting in left upper extremity C6 radiculopathy. He recommended continued conservative care of medication, a home stretching program, work restrictions, and an evaluation by the pain clinic. (Ex. 1, p. 17; Ex. G, p. 1)

At Dr. Cassen's referral, on November 19, 2013, claimant presented to Siouxland Surgery Center Pain Clinic for evaluation by John Cook, M.D. Dr. Cook assessed cervical radiculopathy at C5-6 with left-sided symptomatology and radicular pain

consistent with degenerative disc disease. He performed a cervical epidural steroid injection at left C5-6. (Ex. H, p. 2)

On December 17, 2013, Donald Trometer, risk manager for defendant, authored a letter to claimant regarding the alleged October 4, 2013 injury. Mr. Trometer attached a copy of claimant's MRI and described the findings. (Ex. N, pp. 1-3) Mr. Trometer noted claimant's treatment with Dr. Cook and Dr. Johnson had been to address disc protrusions and osteophytes. He indicated osteophytes develop in "deteriorating joints damaged by arthritis" and were not "caused as a result" of the alleged October 4, 2013 injury and were not work related. Mr. Trometer stated that based upon the MRI findings, defendant would not consider further cervical treatment work related and would not pay for such treatment; claimant was advised to submit such bills under his personal health insurance. (Ex. N, p. 1)

Mr. Trometer testified at evidentiary hearing. He has served as risk manager for defendant for 30 years. Mr. Trometer admitted the letter of December 17, 2013 was based upon his reading of the MRI report and not upon a physician's opinion. (Mr. Trometer's testimony) Mr. Trometer's testimony was clear and did not conflict with the evidentiary record. His demeanor did not lead the undersigned to doubt his veracity. Mr. Trometer is found credible.

On December 18, 2013, claimant presented to Dr. Johnson in evaluation of neck pain and left arm pain, numbness and tingling. Claimant reported on October 4, 2013, he had been struck on the head by a heavy steel plate at work and thereafter, developed neck pain with radiation to the left upper extremity. Dr. Johnson compared claimant's cervical spine MRIs of 2011 and 2013; he expressed belief the 2013 MRI possibly revealed a small focal disc tear at left L5-6 which was not present in 2011. (Ex. 2, p. 36) Dr. Johnson opined claimant was symptomatic from cervical radiculopathy at C5-6 that might be tied to an acute disc herniation or to underlying spondylosis "that was severely aggravated" by the work injury. He opined in either case, claimant's condition was "clearly work related" as claimant lacked pain in this distribution prior to the work injury. Dr. Johnson recommended a single level C5-6 anterior discectomy, fusion and plating. (Ex. 2, p. 38)

After receipt of Dr. Johnson's report, Mr. Trometer testified he sought the opinion of an evaluating physician. (Mr. Trometer's testimony) Mr. Trometer contacted nurse case manager Mary Sullivan, RN, on January 6, 2014 and requested she arrange an independent medical evaluation (IME) with Douglas Martin, M.D. (Ex. O, p. 2)

At the arranging of defendant, on January 24, 2014, claimant presented for IME with Dr. Martin. Dr. Martin issued a report of his findings and opinions that same date. In completion of his IME, Dr. Martin performed a records review. (Ex. P, pp. 1-5) Given claimant's complaint of left upper extremity symptoms and history of right carpal tunnel release, he requested claimant's medical records surrounding the prior right carpal tunnel release. (Ex. P, p. 1) Dr. Martin also noted claimant's history of cervical spine

problems and right rotator cuff repair; he commented claimant appeared "relatively oblivious" to the prior cervical condition. (Ex. P, p. 3)

On interview, claimant informed Dr. Martin he had been struck on the head by a pan while working on October 4, 2013. (Ex. P, p. 2) Dr. Martin reviewed claimant's cervical spine MRIs of May 20, 2011 and October 23, 2013 and opined they revealed multilevel degenerative changes from essentially C3-4 to C7-T1, with the most degeneration at C4-5, C5-6, and C6-7 levels. He also noted the presence of osteophyte complexes. (Ex. P, pp. 2, 5) Dr. Martin opined the two MRIs were "fairly consistent with degenerative abnormalities." (Ex. P, p. 5) Dr. Martin also performed a physical examination of claimant. (Ex. P, pp. 5-6)

Following records review, interview, and examination, Dr. Martin assessed multilevel cervical degenerative changes and left upper extremity dysesthesias, possibly consistent with carpal tunnel syndrome, C6 radiculopathy, or double crush phenomenon. (Ex. P, p. 6) Dr. Martin opined claimant probably suffered a minor concussion, cervical strain and/or impact injury when he was struck in the head on October 4, 2013. However, he did not believe the event changed the "architecture" of claimant's cervical spine and further opined the event did not cause or aggravate a degenerative change to create a radiculopathy. (Ex. P, p. 7) He opined claimant had not yet achieved MMI and recommended a left upper extremity EMG. (Ex. P, pp. 6-7) Dr. Martin also imposed a work restriction of a 20-pound maximum lift. (Ex. P, p. 8)

Following the IME, Ms. Sullivan consulted with Dr. Martin directly. In her case management notes, Ms. Sullivan indicated Dr. Martin believed claimant probably suffered a minor concussion, cervical strain or impact injury on October 4, 2013, but the injury did not change the condition of claimant's cervical spine. She noted Dr. Martin also recommended an EMG to further evaluate claimant's complaints. (Ex. O, p. 2)

Per Dr. Martin's recommendation, claimant underwent left upper extremity EMG on February 3, 2014. (Ex. 2, pp. 40, 92)

Dr. Martin subsequently reviewed the EMG results, as well as additional records of Drs. Cassens, Johnson, and Bjork. (Ex. P, p. 11) After his review, Dr. Martin issued a supplemental report on February 17, 2014, by which he opined it appeared claimant's left upper extremity numbness and tingling were related to carpal tunnel syndrome and not to cervical radiculopathy. Accordingly, he recommended a left carpal tunnel release and not a cervical procedure. He further opined claimant's cervical spine problems were degenerative in nature and the surgical prognosis for similarly situated persons was poor. (Ex. P, p. 12)

On February 25, 2014, Dr. Martin authored a supplemental report regarding whether claimant's left carpal tunnel syndrome was work related. Dr. Martin explained carpal tunnel syndrome is multifactorial by nature. (Ex. P, p. 13) He reviewed claimant's job description and noted in the physical requirements section, references were made to lifting capabilities, but no reference was made to high repetition of the

hands, forceful work with the hands, awkward postures of the hands, or vibration. Dr. Martin opined that given the stated demands of claimant's work and the known risk factors for carpal tunnel syndrome, it appeared claimant's "occupational situation would not rise to the level of causal correlation" for left carpal tunnel syndrome. (Ex. P, p. 14) After also considering factors of age, body mass index, and comorbidities, Dr. Martin opined he was unable to opine claimant's left carpal tunnel syndrome was work related. (Ex. P, pp. 14-15)

On March 18, 2014, claimant returned to Dr. Johnson in follow up. Dr. Johnson opined claimant's EMG showed severe left carpal tunnel syndrome without evidence of C6 radiculopathy. (Ex. 2, p. 41) He opined claimant was most symptomatic from the left carpal tunnel syndrome and accordingly, recommended a left open carpal tunnel release. (Ex. 2, p. 42)

Claimant underwent left open carpal tunnel release, performed by Dr. Johnson on March 20, 2014. (Ex. 3, p. 4) Following surgery, Dr. Johnson released claimant to return to work under restrictions on March 25, 2014. (Ex. 2, p. 76) When claimant returned to Dr. Johnson in follow up on April 1, 2014, claimant reported continued symptoms and a lack of the immediate relief he felt following right carpal tunnel surgery. (Ex. 2, p. 45) Dr. Johnson removed claimant from work pending follow up. (Ex. 2, pp. 45-46) On April 15, 2014, Dr. Johnson ordered a course of physical therapy and released claimant to return to work under restrictions. (Ex. 2, p. 49) Defendant's records reveal claimant was paid temporary disability benefits until April 17, 2014. (Ex. 21, p. 2)

Claimant returned to Dr. Johnson on May 13, 2014 and reported continued symptomatology. Dr. Johnson expressed belief claimant remained symptomatic with respect to his neck. Dr. Johnson noted the mechanism of injury reported by claimant could result in radicular symptoms. He also opined that even if claimant demonstrated underlying spondylosis, he might have sustained an additional disc bulge, herniation or nerve root compression that caused the radicular symptoms. Dr. Johnson recommended proceeding with a two-level anterior cervical discectomy and fusion (ACDF) at C5-6 and C6-7. Dr. Johnson released claimant to full duty with respect to the left hand, but imposed work restrictions relative to the neck of no lifting over 70 pounds. (Ex. 2, pp. 54-57)

On May 21, 2014, Dr. Johnson completed a check-the-box form authored by claimant's counsel. By this form, Dr. Johnson opined claimant suffered left carpal tunnel syndrome as a result of repetitive work activities and the left carpal tunnel surgery was necessitated by the work activities. (Ex. 2, p. 98) With respect to claimant's cervical spine condition, Dr. Johnson opined claimant suffered a material aggravation of a preexisting cervical condition when the plate struck him on October 4, 2013. He opined the recommended spinal fusion was necessary as a result of this material aggravation. (Ex. 2, pp. 98-99)

On May 29, 2014, Dr. Johnson performed ACDF at C5-6 and C6-7. (Ex. 2, p. 59; Ex. 3, pp. 5-6) Following surgery, claimant developed a seroma and infection of his neck, which required hospitalization, treatment, irrigation and antibiotics. (Ex. 2, p. 59; Ex. 7, pp. 3-15, 20) After claimant recovered from the infection, Dr. Johnson ordered a course of therapy. (Ex. 2, p. 61) Dr. Johnson released claimant without restrictions on August 20, 2014. (Ex. 2, p. 63)

Following Dr. Johnson's release, claimant testified he returned to full duty work for defendant as an automotive mechanic 1. Claimant testified he was much more careful in his activities and used assistance, like a forklift or team lifting, in performance of heavy tasks. (Claimant's testimony)

At the arranging of claimant's counsel, on September 18, 2014, claimant underwent a functional capacity evaluation (FCE) with Timothy Saulsbury, DPT. Mr. Saulsbury opined the results of claimant's FCE were valid and demonstrated an ability to function in the light physical demand category. (Ex. 11, p. 6) Specific abilities were noted to include: maximum lifting in power-lift position of 45 pounds infrequently, 35 pounds occasionally, 20 pounds frequently, and 15 pounds constantly; carrying of a maximum of 25 pounds with both hands or 18 pounds with one hand, on an infrequent basis; pushing or pulling of 30 pounds infrequently; occasional squatting; infrequent crawling; and occasional forward or overhead reaching. (Ex. 11, p. 32)

Following receipt of the FCE results, claimant's counsel forwarded a copy of the FCE report to Dr. Johnson for review. On September 24, 2014, Dr. Johnson adopted the FCE findings as claimant's permanent work restrictions. (Ex. 2, pp. 102-104)

On November 10, 2014, claimant presented to Siouxland Community Health with complaints of right elbow swelling and pain of a two-week duration. He was assessed with possible bursitis and provided with a compression wrap and a prescription for ibuprofen 800 mg. (Ex. 6, p. 14) Shortly thereafter, claimant was issued an orthopedic referral. (Ex. 6, p. 18)

On January 7, 2015, claimant returned to Dr. Johnson, who noted complete resolution of left upper extremity symptoms and some neck stiffness, but no pain. Dr. Johnson placed claimant at MMI and released him from care, to return as needed. (Ex. 2, pp. 65-66) This same date, Dr. Johnson completed a check-the-box form authored by claimant's counsel. By his answers, Dr. Johnson opined claimant had achieved MMI for the work-related left carpal tunnel syndrome as of May 13, 2014. He opined claimant sustained no ratable impairment as a result of the left carpal tunnel condition. (Ex. 2, p. 106) With respect to the cervical spine condition, Dr. Johnson opined claimant achieved MMI for this work-related condition on January 7, 2015. He opined claimant sustained a permanent impairment of 25 percent whole person as a result of the neck condition. (Ex. 2, p. 107)

On January 28, 2015, Dr. Johnson completed another check-the-box form authored by claimant's counsel. By his answers, Dr. Johnson opined claimant had achieved MMI for the right carpal tunnel condition, which developed due to repetitive work duties. He placed claimant at MMI for this condition as of June 26, 2012 and opined claimant sustained a 3 percent right upper extremity impairment. (Ex. 2, p. 111)

At the arranging of claimant's counsel, on February 10, 2015, claimant presented for IME with board certified occupational medicine physician, Sunil Bansal, M.D. Dr. Bansal issued a report containing his findings and opinions on May 1, 2015. In completing his report, Dr. Bansal performed a medical records review. (Ex. 12, pp. 38-51) He also performed a physical examination of claimant. (Ex. 12, pp. 54-55)

Dr. Bansal interviewed claimant, at which time claimant reported he developed neck pain after being struck in the head with a 40-pound steel plate while servicing an excavator. (Ex. 12, pp. 51-52) Claimant complained of constant aching pain of his lower neck and development of headaches with increased pain levels. Claimant also complained of weakness of the bilateral hands, but no pain, numbness or tingling; he also denied numbness or tingling of the arms. Claimant reported an average neck pain level of 4 on a 10-point scale, with the potential to reach a level 6. (Ex. 12, p. 53)

Claimant reported a belief he could comfortably lift approximately 20 pounds with the right hand on an occasional basis and 10 pounds on a more frequent basis. Claimant reported his left hand was weaker, noted by Dr. Bansal as due to nerve damage from the neck injury. Claimant reported an ability to lift 10 pounds occasionally and 5 pounds frequently with the left hand. Claimant reported an inability to lift over shoulder level with either arm and limitations in his neck motion. (Ex. 12, p. 53)

Claimant described his job duties as an automotive mechanic 1 for Dr. Bansal. Dr. Bansal noted claimant's duties included lifting and use of his hands on tools, use of air impact tools, and actions of cranking and torqueing. (Ex. 12, pp. 53-54)

Following records review, interview, and examination, Dr. Bansal issued opinions regarding causation and any permanent impact of claimant's conditions. He opined claimant developed right carpal tunnel syndrome due to repetitive activities as a mechanic, as the job placed significant pressure on claimant's wrists, based on repetition, motion, force, and the angle of the position of the wrists. (Ex. 12, p. 55) He opined claimant achieved MMI on June 26, 2012, required no further care or permanent restrictions, and sustained no ratable impairment to the right upper extremity. (Ex. 12, p. 57) With respect to the left upper extremity, Dr. Bansal opined claimant developed left carpal tunnel syndrome as a result of work due to the same mechanisms as involved in development of right carpal tunnel syndrome. He opined claimant achieved MMI as of January 7, 2015, required no further care or restrictions, and sustained no ratable permanent impairment. (Ex. 12, p. 58)

With respect to claimant's cervical spine condition, Dr. Bansal opined the October 4, 2013 injury aggravated claimant's underlying cervical spondylosis and caused a lateralized C5-6 disc protrusion. (Ex. 12, p. 58) Given claimant's history of neck pain, Dr. Bansal noted he considered whether claimant suffered a change in the character or intensity of claimant's symptoms following the alleged injury. After doing so, Dr. Bansal opined it was "clear" claimant suffered a permanent aggravation of his cervical condition due to the October 4, 2013 work injury. He highlighted claimant's changed symptoms and different treatment plan following the alleged injury. (Ex. 12, p. 59) Dr. Bansal opined claimant's fusion surgery was necessitated by the work injury. He opined claimant achieved MMI on January 7, 2015 and recommended future maintenance care; he also cautioned claimant was at risk of adjacent segment disease and further fusion. Dr. Bansal adopted the results of claimant's FCE with respect to recommended permanent restrictions. (Ex. 12, pp. 60, 62) Dr. Bansal opined claimant sustained permanent impairment of 27 percent whole person, computed by the range of motion method. (Ex. 12, pp. 61-62)

On October 28, 2015, claimant returned to Dr. Johnson's office with reports of increased neck pain, headaches, and numbness and tingling of three digits of the left hand. He noted the symptoms had been present for approximately two months. Physical therapy was ordered. (Ex. 2, pp. 67-68)

Claimant provided deposition testimony on November 18, 2015. During his deposition, claimant testified that since the October 4, 2013 work injury, there were work tasks he was unable to complete. He also testified some of his job duties fell outside the restrictions outlined in his FCE results. (Ex. 22, Depo. Tr. pp. 81-88, 95-96, 112-118)

On December 10, 2015, claimant, his counsel, and several representatives from defendant met to discuss claimant's "failure to notify" his supervisor of ongoing restrictions and an inability to perform his duties. (Ex. 18, p. 62) Claimant's answers to interrogatories note the FCE report and Dr. Johnson's report adopting these restrictions were served upon defendant's attorney on October 2, 2014. (Ex. 19, p. 12)

Defendant secured rehabilitation consultant, Michelle Holtz, B.A., to perform an industrial disability/employability assessment for claimant. Ms. Holtz possesses a bachelor's degree in psychology. (Ex. R, p. 1) Ms. Holtz reviewed claimant's medical records, personnel file, and deposition transcript; she issued her report on December 14, 2015. (Ex. S, pp. 1-2) Ms. Holtz noted claimant's education consisted of graduation from high school; she noted at deposition claimant reported he had been in a special education program. She noted claimant also possessed a forklift certification and a CDL with endorsements. (Ex. S, p. 7)

Ms. Holtz noted claimant's work history included: welder, laborer, farmer, meatpacking, painter, and automotive mechanic. She broke down claimant's past employment per the Dictionary of Occupational Titles as follows: automobile mechanic as medium, skilled work; painter as medium, skilled work; meat cutter as heavy,

semiskilled work; repossessor as medium, semiskilled work; farmworker as heavy, semiskilled work; and material handler as heavy, semiskilled work. (Ex. 7, pp. 7, 9)

She noted claimant worked for defendant as an automotive mechanic 1 and had continued in the pre-injury position following injury, without requests for modification. She further noted claimant's hourly wage had increased from $23.051 at the time of the alleged October 2013 injury to $23.98. Ms. Holtz noted claimant's work was classified as medium, skilled work by the Dictionary of Occupational Titles, but the job description would more aptly place the work in the heavy physical demand category. (Ex. S, pp. 7-9) Ms. Holtz identified a number of skills possessed by claimant. (Ex. S, pp. 9-11)

Ms. Holtz reviewed claimant's FCE results and noted the results had been adopted by Drs. Johnson and Bansal. She opined the restrictions would limit claimant to positions in the sedentary to medium physical demand categories of work. (Ex. S, p. 6) Ms. Holtz also noted that claimant and defendant were in discussion regarding his continued employment, given defendant was now aware of claimant's FCE results and claimant's deposition testimony that the FCE restrictions precluded performance of a number of job duties. (Ex. S, pp. 7-8)

Ms. Holtz performed labor market research, utilizing the results of claimant's FCE, of the market within 50 miles of claimant's home in Sioux City, Iowa. (Ex. S, p. 12) To do so, she utilized the Occupational Access System (OASYS) computer program. Her analysis yielded a loss of access to jobs in claimant's labor market of approximately 64 percent. (Ex. S, p. 13) She provided examples of job positions located in her labor market survey: light production worker; hand packager; route driver (certain settings); shag driver (certain settings); security guard; machine packager; mail inserter; cashier; customer service associate; housekeeper; environmental service worker; bus driver; shuttle van driver; and food delivery driver. Ms. Holtz noted these positions carried weekly wages ranging from $360.00 to $480.00; which compared to claimant's preinjury wage of $926.62, yielded a loss of wage range of 48 to 61 percent. (Ex. S, p. 13)

Ms. Holtz ultimately opined claimant's FCE restrictions would preclude his return to some past employment positions, but claimant possessed transferable skills which would make him a candidate for employment. She opined given all factors and assuming a causal relationship between claimant's condition and his work, claimant had sustained a 65 percent loss of earning capacity. (Ex. S, p. 22)

Claimant retained vocational consultant, Rick Ostrander, MA, to perform a vocational evaluation. Mr. Ostrander possesses a bachelor's degree in psychology and master's degree in counseling. Mr. Ostrander performed an initial interview of claimant in October 2014; however, he did not issue a report until December 18, 2015, after questions arose with respect to claimant's ability to remain employed at defendant. (Ex. 15, p. 7)

Mr. Ostrander reviewed claimant's medical records and interviewed claimant. (Ex. 15, pp. 1-6) He noted claimant's education consisted of graduation from high school with special education and a vocational diploma. Mr. Ostrander noted he also reviewed claimant's standardized and I.Q. testing, which he opined placed claimant in the borderline range of intellectual functioning. Mr. Ostrander noted claimant possessed a valid CDL, as well as certifications in forklift and scissor lift operation. He noted claimant was self-taught in mechanics. (Ex. 15, p. 6)

Mr. Ostrander detailed claimant's job history as including: painter, auto mechanic, farmer, assembly, welding, meatpacking, road grader operator, manufacturing, forklift operator, auto and equipment repair, and as an automotive mechanic for defendant. (Ex. 15, pp. 7-8) He further defined the work history positions by Dictionary of Occupational Titles and O*Net classifications. (Ex. 15, pp. 8-10) Mr. Ostrander noted when claimant had been performing his full duty job at defendant, claimant had been careful and avoided lifting over 50 pounds. However, following his deposition and discussion of the FCE results, claimant had been placed on paid suspension. (Ex. 15, p. 7) Mr. Ostrander noted claimant was unable to perform all his work duties. (Ex. 15, p. 12)

Mr. Ostrander performed a vocational assessment, utilizing the OASYS program as a starting point; from there, he indicated he personally reviewed each individual occupation based on available labor market information. (Ex. 15, p. 10) By his methodology, Mr. Ostrander's pre-injury profile of claimant included access to 57 occupational classifications, containing approximately 24,740 job positions. Claimant's post-injury profile, utilizing the FCE restrictions, included access to only 8 occupational classifications, containing approximately 3,000 positions. Based upon these findings, Mr. Ostrander opined a reduction in employability and labor market access of 86 percent. (Ex. 15, p. 11)

He further opined the post-injury profile positions tended to be lower level unskilled or entry level skilled positions, with an average wage of less than $10.50 per hour. As compared to claimant's average preinjury wage of $926.62, Mr. Ostrander found a reduction in earning capacity in terms of wages of 60 percent. (Ex. 15, p. 11) Given consideration of all relevant factors, Mr. Ostrander opined claimant had sustained a loss of earning capacity of at least 80 percent. He also expressed doubt as to whether claimant would be successful in obtaining and retaining regular employment in the future. (Ex. 15, p. 12)

On December 21, 2015, defendant terminated claimant's employment, as the FCE results foreclosed claimant from performing all essential functions of his position and no party had been able to identify reasonable accommodations which would allow claimant to continue to function as an automotive mechanic 1. (Ex. 18, p. 62) Claimant was unaware of any other positions at defendant which he could perform. (Claimant's testimony)

James Miller, fleet supervisor for defendant, testified at evidentiary hearing. Mr. Miller served as the supervisor of claimant and Mr. Young. He testified when he receives work restrictions for an employee, he reviews those restrictions with Mr. Trometer. He denied knowledge of any work restrictions placed on claimant until contemporaneous with his deposition. Mr. Miller testified claimant is unable to perform the essential functions of the automotive mechanic 1 position within the restrictions set forth in the FCE. (Mr. Miller's testimony)

Mr. Miller's testimony was clear and consistent with the evidentiary record. His demeanor gave the undersigned no reason to doubt his veracity. Mr. Miller is found credible.

Claimant's counsel provided Mr. Ostrander with Ms. Holtz's December 14, 2015 report for review; he issued a responsive report dated December 29, 2015. Mr. Ostrander indicated he was uncertain as to the basis of the discrepancy between his OASYS finding of 86 percent and Ms. Holtz's finding of 64 percent loss of access to jobs. He, however, noted one should not rely on the OASYS system alone and should also consult actual labor market information. Mr. Ostrander further opined the OASYS system does not discriminate well based on sitting, standing and walking, as thus, positions require individual review. By way of example, he highlighted that certain driving positions might require constant sitting or production positions might require constant standing, physical demands which may exceed claimant's abilities. (Ex. 15, p. 54) Mr. Ostrander also critiqued Ms. Holtz's inclusion of certain driving positions in her wage analysis; he opined these positions were outside of claimant's abilities, but carried higher wages. Mr. Ostrander stood by the opinions rendered in his initial report. (Ex. 15, p. 55)

Mr. Ostrander's reports were forwarded to Ms. Holtz for review; she issued a responsive report dated February 11, 2016. She noted Mr. Ostrander too used OASYS to conduct research into claimant's loss of access to employment. Ms. Holtz noted she was unable to determine what manipulations Mr. Ostrander used in completing his analysis and given she did not possess his raw data, Ms. Holtz expressed difficulty in commenting on his findings. (Ex. W, p. 2) She noted Mr. Ostrander failed to provide labor market information. (Ex. W, p. 3) Given these concerns, Ms. Holtz opined Mr. Ostrander's report was inaccurate. She maintained her opinion claimant was employable, but had sustained a 65 percent loss of earning capacity, assuming the restrictions of the FCE were found work related. (Ex. W, p. 5)

In treatment of the alleged work related injuries, claimant incurred medical expenses as detailed in Exhibit 16. The vast majority of expenses were covered by claimant's health insurance, a plan self-funded by defendant. However, claimant also incurred out of pocket expenses and medical mileage expenses. (Ex. 16, pp. 1-6)

Mr. Trometer testified he approved payment of claimant's carpal tunnel syndrome care in an effort to facilitate claimant returning to work. Mr. Trometer testified this authorization of care did not constitute an admission of liability. (Mr. Trometer's testimony)

Claimant testified he has ongoing restrictions he relates to his alleged work injuries. Claimant testified he has difficulty turning his neck and develops pain of his neck with standing over one hour. He also believes he has lost approximately 50 percent of the strength in his bilateral hands. Claimant testified he must fight to accomplish activities of daily living. Claimant self-treats with use of over-the-counter medication; he explained he uses Advil approximately every other day for neck discomfort. (Claimant's testimony)

Claimant's W-2 statements indicate claimant earned the following earnings at defendant: $42,789.58 in 2010; $43,997.52 in 2011; $41,640.42 in 2012; $44,504.82 in 2013; and $31,655.29 in 2014. (Ex. 20, pp. 14, 20, 23, 26, 29)

CONCLUSIONS OF LAW

In File No. 5049666 (Date of Injury: February 1, 2012 Right Carpal Tunnel Syndrome):

The first issue for determination is whether claimant sustained an injury on February 1, 2012 which arose out of and in the course of his employment.

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. 6.14(6).

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).

Claimant claims he developed right carpal tunnel syndrome as a cumulative injury with defendant. Dr. Johnson opined claimant developed right carpal tunnel syndrome due to repetitive work duties. Dr. Bansal opined claimant developed right carpal tunnel syndrome due to repetitive work activities as a mechanic. Both physicians related claimant's diagnosis to his work activities as a mechanic for defendant. There are no contrary opinions. As the opinions of Drs. Johnson and Bansal are unrebutted, it is determined claimant has proven by a preponderance of the evidence that he developed right carpal tunnel syndrome as a result of his work activities for defendant.

The next issue for determination is whether the injury is a cause of permanent disability.

Claimant's surgeon, Dr. Johnson, opined claimant suffered a permanent impairment of three percent right upper extremity as a result of the work-related right carpal tunnel condition. Dr. Bansal, the only other physician to offer an opinion on the extent of claimant's permanent impairment due to right carpal tunnel syndrome, opined claimant sustained no ratable impairment. Neither physician imposed or recommended permanent work restrictions as a result of the right carpal tunnel condition.

Following review of the entirety of the evidentiary record, the undersigned provides the greatest weight to the opinions of Dr. Johnson. Dr. Johnson served as claimant's treating physician and surgeon throughout the pendency of multiple alleged injuries and over the course of approximately four years. He, therefore, is in the best position to assess claimant's condition over multiple evaluations and intraoperatively. Dr. Johnson's opinion is also consistent with claimant's credible testimony that he has lost strength in his right hand.

Given I provide the greatest weight to the opinions of Dr. Johnson, I find claimant has proven his right carpal tunnel syndrome is a cause of permanent disability.

The next issue for determination is the extent of permanent disability to the right arm. The next issue for determination is the commencement date for permanent disability benefits. These issues will be considered together.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

As set forth *supra*, the undersigned provides the greatest weight to the opinions of Dr. Johnson with respect to the extent of claimant's permanent disability. As I find Dr. Johnson's opinion is entitled to the greatest weight and is consistent with claimant's credible testimony of ongoing limitations, it is determined claimant has sustained a permanent disability of 3 percent right upper extremity as a result of the carpal tunnel condition. An award of 3 percent right upper extremity entitles claimant to 7.5 weeks of permanent partial disability benefits (3 percent x 250 weeks = 7.5 weeks).

Compensation for permanent partial disability benefits commences at the termination of the healing period. Defendant's records reveal claimant was paid temporary disability benefits relative to the right carpal tunnel condition from March 6, 2012 through April 6, 2012. Permanent partial disability benefits shall commence on April 7, 2012, the date following termination of the healing period.

The next issue for determination is whether claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13 and if so, how much.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if

viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Iowa Code 86.13, as amended effective July 1, 2009, states:

> 4. a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
>
> (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
>
> c. In order to be considered a reasonable or probable cause or excuse under paragraph *"b"*, an excuse shall satisfy all of the following criteria:
>
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
>
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

By this decision, the undersigned determined claimant suffered a compensable injury in the form of right carpal tunnel syndrome. I further adopted Dr. Johnson's opinion as to the extent of claimant's permanent disability, an award entitling claimant to 7.5 weeks of permanent partial disability benefits. While defendant paid claimant temporary disability benefits, no permanent partial disability benefits were paid. Claimant has therefore established a delay in payment of permanent partial disability benefits as required by section 86.13(4)(b)(1).

The burden therefore shifts to defendant to prove a reasonable or probable cause or excuse for the delay pursuant to section 86.13(4)(b)(2). In order to prove a reasonable or probable cause or excuse for the delay, defendant must show the delay was preceded by a reasonable investigation, the results of the investigation were the actual basis for the delay, and the basis for the delay must have been contemporaneously conveyed to claimant. Mr. Trometer testified defendant did not admit liability for claimant's right carpal tunnel syndrome and simply paid temporary benefits and treatment in order to facilitate a return to work. There is no evidence defendant conveyed the denial to claimant and accordingly, a penalty is warranted.

On January 28, 2015, Dr. Johnson opined claimant sustained a 3 percent right upper extremity impairment as a result of claimant's work-related right carpal tunnel condition. Defendant did not pay this functional rating, nor did defendant secure another opinion on the extent of claimant's functional impairment or on the underlying question of causation. I find defendant did not perform a reasonable investigation. As of the date of hearing, approximately one year later, defendant had yet to pay any permanent partial disability benefits.

The parties stipulated at the time of the February 1, 2012 injury, claimant's gross earnings were $896.00 per week and claimant was married and entitled to two exemptions. The proper rate of compensation is therefore, $585.62. Given this rate, defendant delayed in paying claimant $4,392.15 (7.5 weeks x $585.62 = $4,392.15) in permanent partial disability benefits. A penalty of up to $2,196.08 may be assessed (50 percent x $4,392.15 = $2,196.08). Given the length of delay, lack of investigation, and lack of contemporaneous conveyance of the denial to claimant, I find a penalty of $2,000.00 is warranted.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: filing fee ($100.00); service fee ($19.68); and two reports of Dr. Johnson ($300.00 and $350.00). Defendant does not dispute taxation of these costs. These are allowable costs and are taxed to defendant.

In File No. 5050047 (Date of Injury: October 4, 2013 Left Carpal Tunnel Syndrome; Cervical Spine):

The first issue for determination is whether claimant sustained an injury on October 4, 2013 which arose out of and in the course of his employment.

Claimant credibly and consistently reported he was struck in the head by a metal plate weighing approximately 40 pounds while performing a service on October 4, 2013. This history is repeated throughout claimant's medical records, employment records, and testimony. While there is some dispute between the parties as to the weight of the plate in question, the undersigned finds claimant's testimony to be accurate and consistent with the part specifications and testimony of Mr. Young. I find no evidence in the record which would lead me to discount any medical opinions based upon accuracy of history due to the disputed weight of the plate which struck claimant.

Claimant has allegedly suffered two work-related injuries with a date of injury of October 4, 2013: left carpal tunnel syndrome and a cervical injury. With respect to causal relationship between claimant's left carpal tunnel syndrome and his work duties, three physicians have offered opinions. Dr. Martin opined claimant's work activities did not rise to an adequate level to support a finding of a causal connection. Drs. Johnson and Bansal, on the other hand, both opined claimant developed left carpal tunnel syndrome as a result of repetitive work duties for defendant.

As indicated *supra*, I find Dr. Johnson to be in a superior position to either IME physician with respect to claimant's physical conditions, due to his status as treating surgeon presiding over a course of care stretching four years and multiple surgeries. As claimant's treating physician, tasked with determining work restrictions during courses of treatment, I find Dr. Johnson had a clear understanding of claimant's work duties. Furthermore, Dr. Johnson's opinions as to causal connection are entirely consistent with those of Dr. Bansal whose report details claimant's job duties. Dr. Martin's opinion appears premised on one portion of claimant's job description, but fails to mention physical demands detailed elsewhere in the same description. Additionally, claimant credibly testified the job description utilized did not accurately include all physical demands of his work. I therefore am unconvinced Dr. Martin possessed a full understanding of the extent of claimant's work duties at the time he rendered his opinion.

It is therefore determined claimant has proven by a preponderance of the evidence that he sustained left carpal tunnel syndrome as a result of his cumulative work duties at defendant, manifesting on October 4, 2013.

Claimant also alleges he suffered a traumatic injury to his neck when struck by the metal plate on October 4, 2013. Shortly following the injury, Dr. Johnson opined claimant suffered from cervical radiculopathy at C5-6 that could be tied to an acute disc herniation or underlying spondylosis which was severely aggravated by the work injury

on October 4, 2013. In either instance, Dr. Johnson opined claimant's condition was clearly work related.

Thereafter, Dr. Martin performed an IME and opined claimant likely suffered a minor concussion, cervical strain and/or impact injury on October 4, 2013. He, however, opined the remainder of claimant's condition was degenerative in nature and the October 4, 2013 injury resulted in no structural change in claimant's cervical spine nor aggravated claimant's degenerative condition to result in radiculopathy.

In May 2014, Dr. Johnson reiterated belief claimant suffered a material aggravation of a preexisting cervical spine condition as a result of the work injury of October 4, 2013.

Dr. Bansal subsequently opined the injury of October 4, 2013 resulted in an aggravation of underlying spondylosis and caused a C5-6 disc protrusion. He opined the alleged work injury resulted in a permanent aggravation of claimant's cervical condition.

All the physicians opined claimant suffered an injury as a result of the October 4, 2013 event. The dispute between the providers is to the severity of the event and resultant injury. However, as all the opining medical providers have opined claimant suffered some form of cervical or head injury as a result of the incident, it is determined claimant has proven he suffered an injury to his cervical region as a result of the work injury of October 4, 2013.

With respect to the extent of injury to claimant's cervical region, as has been outlined *supra*, I find the opinions of Dr. Johnson to be entitled to the greatest weight in this matter. Dr. Johnson served as claimant's treating surgeon and had the opportunity to examine claimant prior to and following the alleged injury of October 4, 2013. He is therefore, in the unique position of possessing personal knowledge of claimant's cervical condition preceding and after the injury in question. When combined with his intraoperative observation of claimant's condition, I find the opinions of Dr. Johnson to be entitled to the greatest weight as to the extent of the injury to claimant's cervical spine. Dr. Johnson has consistently opined claimant suffered a material aggravation of a preexisting cervical spondylosis; this opinion is buttressed by the consistent opinion of Dr. Bansal. Therefore, it is determined claimant has proven the work injury of October 4, 2013 caused a material aggravation of an underlying process of his cervical spine, which resulted in a need for treatment and surgical intervention.

The next issue for determination is whether the injury is a cause of temporary disability. The next issue for determination is whether claimant is entitled to temporary disability benefits from May 29, 2014 through August 20, 2014. These issues will be considered together. By the hearing report, defendant stipulated that if found liable for the October 4, 2013 work injury, claimant would be entitled to temporary disability benefits for the period claimed. Therefore, it is determined claimant is entitled to temporary total disability/healing period benefits, whichever should prove applicable,

from May 29, 2014 through August 20, 2014, unless claimant is determined to be entitled to permanent total disability benefits.

The next issue for determination is whether the injury is a cause of permanent disability. Two physicians, Drs. Johnson and Bansal have offered opinions regarding the existence and extent of claimant's permanent functional impairment as a result of the work injury of October 4, 2013.

Both physicians opined claimant sustained no ratable impairment and required no permanent restrictions as a result of the left carpal tunnel condition. As no physician has imposed restrictions or found a permanent impairment as a result of the left carpal tunnel condition, the undersigned finds claimant has failed to prove he sustained permanent disability as a result of this condition.

With respect to claimant's cervical condition, Drs. Johnson and Bansal both adopted the restrictions as outlined in claimant's valid FCE. They both opined claimant suffered significant permanent impairment: 25 percent whole person per Dr. Johnson and 27 percent whole person per Dr. Bansal. There are no conflicting opinions with respect to claimant's need for permanent restrictions nor an opinion supporting a lesser rating of permanent functional loss. Therefore it is determined claimant has proven the cervical injury resulted in permanent disability.

The next issue for determination is the extent of claimant's permanent disability, including whether a scheduled member or industrial disability and whether or not claimant is an odd-lot employee. The next issue for determination is the commencement date for permanent disability benefits. These issues will be considered together.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). As claimant has sustained permanent disability to his neck, his disability shall be evaluated industrially.

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.

Claimant was 60 years of age on the date of evidentiary hearing. He graduated from high school; however, he did so under a special education program which allowed him to perform vocational training for two years. Testing of claimant's I.Q. resulted in scores which Mr. Ostrander categorized as borderline intellectual functioning. Claimant lacks any formal postsecondary or vocational education or training; he has generally learned via hands-on, on-the-job training. Given his limited educational background and lack of computer knowledge, claimant's prospects for retraining are questionable.

As a result of a work-related injury on October 4, 2013, claimant suffered an aggravation of his cervical spine condition and ultimately required a two-level ACDF. Following the procedure, two physicians opined claimant suffered significant permanent functional impairment of 25 and 27 percent whole person. These physicians have adopted work restrictions set forth in a valid FCE. The FCE restrictions were significant enough to result in claimant being foreclosed from performing the essential functions of his job duties. While claimant had returned to work without restrictions, he testified he did not perform all aspects of his position. When defendant was made aware of claimant's FCE limitations, defendant determined claimant could not continue in his preinjury position and terminated claimant's employment. Defendant further noted no party was able to craft accommodations which could salvage claimant's employment in his preinjury position.

As a result of the October 4, 2013 injury and resulting restrictions, claimant has been terminated from his preinjury position. This position fell within the medium to heavy physical demand category, much like the majority of claimant's prior work history. Claimant is likely foreclosed from returning to the majority of positions in his work history. He is also foreclosed from a majority of positions which were available to him prior to the work injury of October 4, 2013, as evidenced by the vocational opinions of Ms. Holtz who found a 65 percent loss of earning capacity and Mr. Ostrander who found a minimum of 80 percent loss of earning capacity.

Given claimant's age, intellectual capabilities, educational background, significant functional impairment, and permanent work restrictions, it is determined claimant is currently permanently and totally disabled. Claimant is therefore entitled to permanent total disability benefits commencing October 5, 2013 and continuing during the period claimant remains permanently and totally disabled. The parties stipulated at the time of the work injury, claimant's gross earnings were $927.00 per week and claimant was married and entitled to two exemptions. The proper rate of compensation is therefore, $591.18. Claimant is not entitled to overlapping healing period benefits for this injury.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

As set forth *supra*, I determined claimant was permanently and totally disabled under an industrial disability analysis. Had I not made such a finding, I would have determined claimant was entitled to permanent total disability benefits as an odd-lot worker, due to the limited employment services claimant is capable of performing post-injury.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

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).

Defendants denied responsibility for claimant's cervical spine injury and as a result, claimant incurred medical expenses in treatment thereof. These expenses are outlined in Exhibit 16. As defendant denied care on this compensable injury, defendant is properly held responsible for the claimed medical expenses.

The next issue for determination is whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27. Claimant requests an order designating Dr. Johnson as an authorized provider for his work-related conditions. As defendant denied claimant's claim and provided no ongoing treatment thereof, claimant's request for alternate care is granted. Dr. Johnson is designated as an authorized physician with respect to the work-related injuries of October 4, 2013.

The next issue for determination is whether claimant is entitled to penalty benefits pursuant to Iowa Code section 86.13 and if so, how much.

By this decision, the undersigned determined claimant suffered a compensable injury to his cervical spine as a result of a work injury on October 4, 2013. I further found claimant was entitled to permanent total disability benefits as a result of this injury, commencing October 5, 2013. Defendant paid no indemnity benefits to claimant as a result of this claim; defendant denied liability for claimant's claim on December 17, 2013. As claimant has proven entitlement to permanent total disability benefits, commencing October 5, 2013, and defendant had paid no indemnity benefits as of the date of evidentiary hearing, claimant has proven a denial of payment of benefits as required by section 86.13(4)(b)(1).

As claimant established a delay or denial in payment of benefits, the burden therefore shifts to defendant to establish a reasonable or probable cause or excuse for the denial pursuant to section 86.13(4)(b)(2). In order to meet this burden, defendant must prove the denial was preceded by a reasonable investigation, the results of the investigation were the actual basis for the denial, and the basis for the denial must have been contemporaneously conveyed to claimant.

Claimant reported the occurrence of the work injury to defendant on October 10, 2013. Defendant referred claimant for evaluation with Dr. Cassens, who assessed various strains and left upper extremity radiculopathy. He initiated a course of conservative care, including work restrictions and an MRI referral; the MRI was undergone on October 23, 2013. Thereafter, claimant returned to Dr. Cassens, who reviewed the MRI and noted C5-6 minimal right and moderate left foraminal narrowing with a small left foraminal disc protrusion and osteophyte formation. Dr. Cassens assessed degenerative narrowing of the left C5-6 neural foramen, "transiently aggravated" and resulting in left upper extremity C6 radiculopathy. He recommended further conservative measures of medication, a stretching regimen, work restrictions, and a pain clinic evaluation. At the pain clinic, Dr. Cook noted findings consistent with degenerative disc disease and performed a cervical epidural steroid injection.

Thereafter, on December 17, 2013, Mr. Trometer authored a letter to claimant regarding the status of claimant's claimed October 4, 2013 work injury. Mr. Trometer attached the October 23, 2013 MRI report and described the findings of the report. He then represented that osteophytes developed in arthritic joints and were not work related, nor specifically caused by the October 4, 2013 incident. Mr. Trometer stated that based upon the MRI results, defendant would not consider further cervical care to be work related. At the time of evidentiary hearing, Mr. Trometer admitted the December 17, 2013 letter was based upon his reading of the MRI report, as opposed to any physician-authored opinion.

Defendant provided claimant with a contemporaneous written denial, stating the basis of defendant's position. Despite providing claimant with this notification and describing the basis of the denial, I find defendant failed to reasonably investigate claimant's claim and further, that the denial was not based upon a reasonable investigation. While defendant did refer claimant for medical treatment with Drs. Cassens and Cook, defendant ultimately denied claimant's claim based upon Mr. Trometer's reading of the MRI report. There is no evidence Mr. Trometer is a medical professional who is qualified to interpret diagnostic reports. Even assuming the presence of primarily degenerative findings, Mr. Trometer did not address the possibility of a potential material aggravation of a preexisting condition. This omission is particularly troublesome given Dr. Cassen's explicit opinion that claimant's cervical conditions were "transiently aggravated" by the reported injury.

Based upon these facts and Mr. Trometer's own testimony, it is clear Mr. Trometer substituted his judgment for that of a medical professional. This practice of a layperson substituting judgment for that of a competent medical professional is frowned upon by this agency. See Montgomery v. John Deere Davenport Works, File No. 5035802 (App. August 8, 2013); Pemberton v. John Deere Davenport Works, File No. 5033771 (App. March 21, 2013); Kellett v. John Deere Davenport Works, File No. 5034810 (App. April 17, 2013)

The undersigned found claimant is entitled to permanent total disability benefits commencing October 5, 2013 at the weekly rate of $591.18. As of the date of this decision, over 167 weeks of permanent total disability benefits have accrued and remain unpaid. A penalty of up to $49,363.53 may, therefore, be assessed (50 percent x (167 weeks x $591.18)). Despite being found entitled to permanent total disability benefits, it is notable that claimant continued to work for defendant following the October 4, 2013 injury, with the exception of the period of May 29, 2014 through August 20, 2014, during which he recovered from ACDF surgery. However, defendant ultimately terminated claimant's employment on December 21, 2015, leaving claimant without indemnity benefits or wages. The termination was, without question, due to defendant's inability to accommodate claimant's permanent work restrictions resulting from the work injury of October 4, 2013. Given this factual background, the troublesome nature of defendant's denial, and defendant's history of penalty assessments, an award of $15,000.00 in penalty benefits is appropriate.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: filing fee ($100.00); service fees ($21.01); FCE expense ($800.00); and vocational report of Mr. Ostrander ($1,833.00). Defendant did not dispute taxation of these costs. These are allowable costs and are taxed to defendant.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5049666 (Date of Injury: February 1, 2012 Right Carpal Tunnel Syndrome):

Defendant shall pay unto claimant seven point five (7.5) weeks of permanent partial disability benefits commencing April 7, 2012 at the weekly rate of five hundred eighty-five and 62/100 dollars ($585.62).

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall pay penalty benefits in the amount of two thousand and no/100 dollars ($2,000.00).

Defendant shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant pursuant to 876 IAC 4.33 as set forth in the decision.

In File No. 5050047 (Date of Injury: October 4, 2013 Left Carpal Tunnel Syndrome; Cervical Spine):

Defendant shall pay unto claimant permanent total disability benefits at the weekly rate of five hundred ninety-one and 18/100 dollars ($591.18), commencing October 5, 2013 and continuing during the period claimant remains permanently and totally disabled.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall pay claimant's prior medical expenses submitted by claimant at the hearing as set forth in the decision.

Defendant shall pay penalty benefits in the amount of fifteen thousand and no/100 dollars ($15,000.00).

Defendant shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendants pursuant to 876 IAC 4.33.

Signed and filed this 20th day of December, 2016.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/kjw

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.