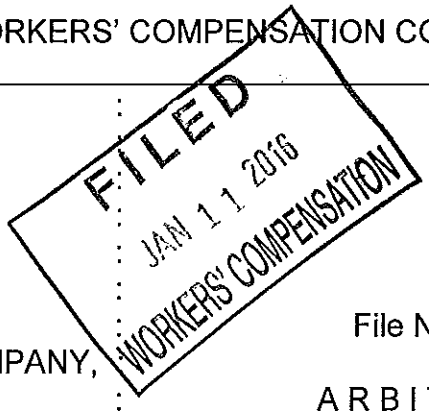
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



OMER DEDAJIC,

Claimant,

vs.

LARSON CONSTRUCTION COMPANY,

Employer,

and

ACCIDENT FUND GENERAL INSURANCE CO./UNITED WISCONSIN INS. CO. d/b/a UNITED HEARTLAND,

Insurance Carrier,
Defendants.

File No. 5041640

A R B I T R A T I O N

D E C I S I O N

Head Note Nos.: 1801, 1803, 4000.2

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Omer Dedajic, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on June 18, 2013. Claimant alleged he sustained a work-related injury on October 15, 2010. (Original notice and petition)

Larson Construction Company, and its workers' compensation insurance carrier, United Wisconsin Insurance Co., d/b/a United Heartland, filed their answer on July 19, 2013. They admitted the occurrence of the work injury. A first report of injury was filed on October 21, 2011.

The hearing administrator scheduled the case for hearing on July 24, 2014 at 11:00 a.m. The hearing took place in Iowa Falls, Iowa at the Renewable Energy Center. The undersigned appointed Ms. Alyssa Klaver, as the certified shorthand reporter. She is the official custodian of the records and notes.

Ms. Karmela Loftus was sworn in as the Bosnian interpreter. She is associated with Cross Link Interpretation Services. Her telephone number is 515-447-1994.

Claimant testified on his own behalf. Mr. Ragib Dedajic, adult son of claimant, testified on behalf of his father. Defendants elected not to call any witnesses at the arbitration hearing.

The parties offered numerous exhibits. Claimant offered exhibits marked 1 through 30. Defendants offered exhibits marked A through U. All proffered exhibits were admitted as evidence in the case.

Post-hearing briefs were filed on August 11, 2015. The case was deemed fully submitted on that date.

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. Claimant sustained an injury on October 15, 2010, which arose out of and in the course of his employment;

3. The injury is a cause of both temporary and permanent disability;

4. Although entitlement for healing period benefits cannot be stipulated, the parties admit claimant was off work from October 16, 2010 through July 9, 2014;

5. If weekly benefits are owed, the parties stipulate the weekly benefit rate is $389.74 per week;

6. Defendants have waived any affirmative defenses; and

7. Prior to the hearing, claimant was paid 65.3 weeks of healing period benefits at the weekly benefit rate of $389.74 per week, 131 weeks of permanent partial disability benefits at the weekly benefit rate of $389.74 per week and defendants are entitled to a credit for all benefits paid prior to the date of the decision.

The issues presented are:

1. The extent of healing period benefits to which claimant is entitled to receive;

2. Whether claimant's injury is a scheduled member injury or an injury to the body as a whole;

3. The extent of permanent disability benefits to which claimant is entitled to receive;

4. The commencement date for permanent disability benefits for claimant's claim;

5. Whether claimant is entitled to the payment of medical expenses pursuant to Iowa Code section 85.27;

6. Whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27;

7. Whether claimant's benefits should be suspended for failure to attend an independent medical examination pursuant to Iowa Code section 85.27; and

8. The extent of costs and medical mileage to which claimant is entitled.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and the other witness, at hearing, after judging the credibility of all, 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 R. App. P. 6.14(6).

Claimant was born in Bosnia. Currently, he is 52 years old. He is married and his two sons live with him. One son has graduated from college. The other son is a student. Claimant's spouse works at Tyson Fresh Meats in Waterloo.

Claimant is right-hand dominant. He has been a one pack per day cigarette smoker for more than 25 years. Many healthcare providers have counseled claimant to discontinue smoking but claimant feels it is an impossible task for him to complete.

Claimant graduated from high school in Bosnia and took training to become a welder. He served as an officer in the Bosnian army. He worked in construction for seven years while he was in Bosnia. He also owned and operated an auto parts store and a liquor store. Claimant explained the liquor store was much more profitable than the auto parts store.

On May 5, 2001, claimant immigrated to the United States as a refugee. He settled in Waterloo. At some point in time, claimant enrolled in a welding class at Hawkeye Technical College in Waterloo. He became a certified welder. The classes were taught in English. Claimant stated he is unable to read and write in the English language, although he is able to understand some basic English conversation.

Initially, claimant worked in the siding business for the Lloyd Company. Then he worked for Action Garage. In July of 2005, claimant commenced employment with Larson Construction. Claimant described the work as very strenuous. His duties entailed pouring and spreading concrete, welding aluminum, and performing roofing tasks.

On the day of the work injury, claimant fell 7 to 8 feet from a ladder and landed on concrete with his right arm outstretched. There was a fire, so claimant crawled to safety and used his cell phone to obtain assistance. The supervisor drove claimant to Waverly Health Center. (Exhibit 1, page 1)

Mark W. Berger, M.D., interpreted x-rays of the right arm. The radiologist found:

> FINDINGS: Comminuted fracture deformity of the metaphysis of the distal right radius extending to the radiocarpal joint. There is pronounced volar angulation of the fracture apex. The proximal bones of the forearm are intact.
>
> CONCLUSION: Comminuted, intra-articular, angulated fracture distal right radius.

(Ex. 1, p. 5) Claimant was advised to confer with an orthopedic specialist.

James C. Johns, M.D., performed an open reduction internal fixation, right distal radius fracture. The surgery occurred on October 18, 2010. (Ex. 2, p. 1) Plates and screws were inserted. Dr. Johns continued to treat claimant. On February 25, 2011, Dr. Johns performed an excision of a posttraumatic heterotopic bone, of the right distal forearm and an open reduction internal fixation of the right ulnar fracture. (Ex. 2, p. 6) On July 15, 2011, Dr. Johns performed a right carpal tunnel release and removed screws from the plates in claimant's arm, where the radius fracture appeared to be completely healed. (Ex. 2, p. 9) Dr. Johns performed a fourth surgery on November 30, 2012. (Ex. 2, p. 10) The purpose of the surgery was to address posttraumatic arthritis in the right wrist. (Ex. 2, p. 10)

Dr. Johns opined claimant had reached maximum medical improvement effective September 27, 2011. (Ex. 4, p. 10) The orthopedic surgeon imposed the following work restrictions:

> I think that Mr. Dedajic can now be regarded at maximal medical improvement. I would consider his work restrictions of no lifting more than 5 pounds, no climbing, and as needed splint wear to be permanent work restrictions.

(Ex. 4, p. 10)

On October 3, 2011, Dr. Johns opined claimant had a 25 percent permanent impairment to the right upper extremity based on the AMA Guides to the Evaluation of

Permanent Impairment, Fifth Edition. (Ex. 4, p. 11) The surgeon modified his impairment rating to 47 percent to the right upper extremity on June 26, 2013. (Ex. 4, p. 18)

Claimant testified he continually complained to Dr. Johns about his right elbow and shoulder throughout the course of his treatment for the right arm. The clinical notes for Cedar Valley Hand Surgery on October 25, 2010 indicated claimant complained about his right shoulder on October 25, 2010. The note stated in part:

> Exam shows a mild decrease in his overall swelling, and the proximal ecchymosis is resolving. He has good elbow motion with minimal tenderness over the radial head. He did have some tenderness over the posterior right shoulder but no swelling or deformity, and good shoulder abduction without discomfort.

(Ex. 4, p. 1)

On May 30, 2012, the clinical notes of Dr. Johns reflected complaints of "diffuse elbow pain and somewhat diffuse shoulder and posterior cervical pain." (Ex. 4, p. 12) The orthopedic surgeon explained to claimant:

> I have had a long and extended discussion today with Mr. Dedajic regarding his complaints. I have explained to him that I do not evaluate or treat shoulder or cervical spine area discomfort and that he should seek follow-up with a physician that does evaluate those areas. I think he has some tendonitis of his elbow and some distal radial ulnar joint arthritis of the right wrist. I have recommended a therapy program for his elbow tendonitis.

(Ex. 4, p. 12)

Claimant exercised his right to an independent medical examination pursuant to Iowa Code section 85.39. Farid Manshadi, M.D., a physiatrist, examined claimant on December 13, 2011. Pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Manshadi rated claimant as having a 41 percent permanent impairment of the right upper extremity. (Ex. 10, p. 5) Dr. Manshadi imposed permanent restrictions for claimant's right upper extremity. Claimant is restricted from lifting more than two to four pounds and he is to avoid climbing ladders and crawling. (Ex. 10, p. 6) Claimant did not report problems with the right shoulder to Dr. Manshadi. As a result, Dr. Manshadi did not provide a permanent impairment rating for the right shoulder.

Because of claimant's right shoulder complaints, defendants referred claimant to Richard Naylor, D.O., for an examination of the right shoulder. (Ex. 13) MRI testing of the right shoulder demonstrated shoulder impingement and AC joint arthrosis, otherwise

the exam was negative. (Ex. 13, p. 10) In his report of May 17, 2013, Dr. Naylor expressed the following opinions regarding claimant's right shoulder:

> This is a gentleman who fell on his outstretched upper extremity. He had a severe distal radius fracture and had otherwise said that he told the original surgeon that he had shoulder pain and was told that first they would take care of his wrist and then address his shoulder pain later. Again, there is a language barrier, and this was done through an interpreter, which is usually his son, if I remember correctly.
>
> Otherwise, at this time he had MRI consistent with shoulder impingement. He had a diagnostic injection which did decrease his pain and increased his range of motion and strength. At this point he has still reverted back to his original pain levels.
>
> My recommendation would be a shoulder scope at this time with subacromial decompression, and I will say within a degree of medical certainty that this is related to his original fall on my account and by history. Even though there is a delay in presentation, his fall was enough and he has done no other work that would put him in a situation to have any cause for his pain in his shoulder.

(Ex. 13, p. 21)

Defendants requested a records review and an expert opinion from Scott B. Neff, D.O., an orthopedic surgeon. Specifically, defendants wanted Dr. Neff to address whether the right shoulder condition was caused by claimant's work injury on October 15, 2010. Dr. Neff opined:

> Based on review of the records, it is not possible for me to correlate injury to the neck or shoulder with reference to the fall. This claimant did have an injury to his right distal arm but did not report difficulties with the shoulder for almost a year and a half subsequent to that injury.
>
> Subsequent to the injury, the claimant has not used the right arm for any type of repetitious, heavy, or vigorous activity and has protected the arm. According to the records, he has not returned to his previous work activity,
>
> According to the letter you provided, the claimant began to complain of symptoms in the area of his shoulder and neck a year and a half later from the date of his injury.
>
> Based on my review of the records, it appears to me that the AC joint arthritis in the right shoulder is related to aging and normal wear and tear, and is not unusual at all in a 50-year-old individual. There was no complaint for a year and a half subsequent to the fall about pathology,

> pain, or problem with the shoulder. So in my opinion they cannot be correlated and cannot be considered related. I did not find in the records an x-ray of the opposite shoulder. For example, if a 50-year-old has AC joint arthrosis in one shoulder, it would be likely that that individual would have the same degree of AC joint arthrosis in the opposite shoulder if this were simply the result of normal aging and normal wear and tear.

(Ex. L, p. 2)

Despite the opinion of Dr. Naylor, defendants did not authorize treatment for the right shoulder. On April 22, 2013, claimant presented to Arnold E. Delbridge, M.D., for an examination of the right wrist, elbow, and shoulder. (Ex. 17, p. 3) Dr. Delbridge found:

> On exam he has less than normal range of motion of his wrist. He has normal range of motion of his elbow but he is very tender posterolaterally and he has pain in his shoulder and he has limited range of motion in abduction and flexion. I think we should bring him to ADI and put him under the fluoroscope and inject his elbow where it hurts and inject his shoulder and see if that helps before we do anything else. If that doesn't work, we will consider possible operative intervention.

(Ex. 17, p. 3) On April 24, 2013, Dr. Delbridge injected claimant's right elbow and shoulder. (Ex. 17, p. 4) The injections provided only temporary relief.

On June 18, 2013, Dr. Delbridge performed an arthroscopic evaluation of claimant's right shoulder. Claimant had ragged areas in the shoulder and an impingement syndrome. Dr. Delbridge decompressed the shoulder so claimant could move the shoulder more easily than he had prior to the surgical procedure. (Ex. 17, p. 7) The orthopedic surgeon related claimant's right wrist, elbow and shoulder to claimant's work injury on October 10, 2010. The surgeon opined the cervical spine complaints were related to degenerative arthritis in the cervical spine. (Ex. 17, p. 28)

Dr. Delbridge rated claimant as having a 34 percent permanent impairment to the body as a whole. (Ex. 17, p. 33) The orthopedic surgeon opined claimant reached maximum medical improvement on July 10, 2014. With respect to permanent work restrictions, Dr. Delbridge opined:

> It is obvious that Mr. Dedajic has considerable limitations as far as work is concerned. He has minimal pinch on the right hand to the extent that he continues to wear a splint almost constantly. While he has full range of motion of his elbow, he has pain on what gripping he can do because of the epicondylitis of his elbow. Also he has limitations mentioned as far as his shoulder which would preclude him from doing work above shoulder level and preclude him from reaching far away from his shoulder on a repetitive basis to retrieve objects, particularly those in

excess of 10 lbs. He cannot do hand repetitive gripping or motions of supination and pronation.

He has severe epicondylar tendonitis limiting his grip and strength in his right elbow even though he has full range of motion and he had the several surgical procedures by Dr. Johns following his injury to his distal forearm that also result in permanent injury and discomfort upon movement. To that end he wears a splint almost constantly.

My conclusion is that these injuries and subsequent impairment are as a result of his injury of October 2010.

(Ex. 17, p. 34)

Claimant qualified for the Iowa Care program with respect to medical treatment. He sought treatment at the People's Medical Clinic and the University of Iowa Hospitals and Clinics. Matthew J. Bollier, M.D., examined the right elbow. The diagnosis for the elbow was "Likely lateral epicondylitis but could have pain from other things as well." (Ex. 15, p. 4) EMG testing was recommended. (Ex. 15, p. 4) Elbow films were unremarkable with no fat pad, normal alignment and no evidence of fracture. (Ex. 15, p.12) EMG studies were normal. (Ex. T, p. 2) Surgery was suggested but only if claimant would discontinue smoking for six months. Claimant declined the surgery because of his inability to stop smoking. (Ex. 15, p. 13)

Pursuant to a request from defendants, James V. Nepola, M.D., also at the University of Iowa Hospitals and Clinics, examined claimant on March 28, 2014. Dr. Nepola devised the following plan for claimant:

PLAN:

We had a lengthy discussion with the patient in regards to his treatments over the last 3-1/2 years. We discussed with the patient that he had a severe injury to his right upper extremity. Based on the mechanism of his fall and severe injury to his right wrist, it is with medical certainty that his current shoulder symptoms could be related to his work-related injury. Without any preexisting shoulder pain symptoms and the traumatic fall onto this extremity, this could explain his current symptoms.

It is our recommendation that the patient has had recent surgery and is not even a year out from his most recent procedure to his right shoulder. Based on the prior experiences, the patient could continue to see clinical improvement in regards to his right shoulder, up to a year following surgery. The patient does have stiffness to his right shoulder with a tight posterior capsule. Therefore, it would be our recommendation to initiate a posterior capsular stretching program, as well as a range of motion and strengthening program to assist with his rehabilitation following surgery.

> The patient could continue to seek clinical improvement up to a year after his most recent surgery. At that point in time, the patient could be considered at maximal medical improvement. It is unclear the long-term results of his most recent surgery; however, we are optimistic that he will continue to see some clinical improvement with additional stretching and rehabilitation.
>
> Based on the patient's limitations to his forearm and wrist motion, the patient will have likely permanent restrictions in regards to his right upper extremity secondary to his wrist and forearm, in our opinion.

(Ex. 15, p. 21)

Dr. Nepola issued opinions about causation of the right shoulder injury and the nature and extent of permanency in a report that was issued on July 14, 2014. In the report, Dr. Nepola check-marked he agreed with the following statements:

> ...it is our understanding that: 1) provided the lack of significant structural injury as demonstrated by the MRI study and surgery of Mr. Dedajic's right shoulder; and 2) Mr. Dedajic's complaints of right shoulder pain and problems caused by disuse regarding a previous right hand injury in 2007 (please again find these records attached), you are of the opinion, **to a reasonable degree of medical certainty,** that any condition concerning Mr. Dedajic's right shoulder, **that is medically related to his work injury of October 15, 2010**, would solely be **temporary in nature** and would **not** result in any assignable permanent impairment, pursuant to the *AMA Guides, 5th Ed.,* would **not** result in the need for any permanent work/activity restrictions, and would not require any medical treatment in the future, specifically **not** shoulder replacement surgery.

(Ex. T, p. 11)

Claimant is alleging he has a mental component to his claim for workers' compensation benefits. The medical records for Vinko Bogdanic, M.D., claimant's personal physician, indicated claimant had been concerned with depression and anxiety. (Ex. 3, p. 1) On October 21, 2010, Dr. Bogdanic noted claimant's depression was better. (Ex. 3, p. 1) There were other references where claimant reported he was in a "poor mood." (Ex. 3, p. 2) Dr. Bogdanic had prescribed Wellbutrin for claimant.

On December 23, 2011, claimant began treating with Valentina Doumanian, M.D., a psychiatrist at Covenant Clinic Psychiatry. Dr. Doumanian is able to speak the same language as claimant. Communication between the two people was not hampered by a difference in language. After treating claimant for three years, Dr. Doumanian diagnosed claimant with: "Depression, not otherwise specified. Anxiety, not otherwise specified. Attention and Concentration Deficit. Posttraumatic

Stress Disorder." (Ex. 9, p. 18) With respect to any impairment rating, Dr. Doumanian wrote in her report of June 10, 2014:

> IMPAIRMENT RATING: The patient has significant issues with maladaptive defenses and struggles with activities of daily living, social functioning, concentration, persistence and performance.
>
> PERSISTENT OF THE PATIENT'S SYMPTOMS: The patient has shown some improvement in depressive symptomatology, yet his cognitive impairment and anxiety have now shown significant deviance from the beginning. I do see some permanent impairment in the foreseeable future in terms of the patient seeking gainful employment. He has been off of work for several years right now because of his work-related injury. In my opinion, the emotional and psychological status of the patient will prevent him to be gainfully employed in the future, and I do believe that he will probably qualify for disability. The patient has not shown any sign of malingering throughout the last couple of years, nor any signs of exaggeration of symptoms. I do believe that the constellation of his current symptomatology is a result of past war experiences, recent experiences from being injured at work, and current social situation.

(Ex. 9, pp. 18, 19)

On February 28, 2012, claimant met with Carroll D. Roland, Ph.D., a licensed psychologist. Claimant was referred to Dr. Roland by Disability Determination Services for purposes of a psychodiagnostic mental status disability exam. (Ex. 11, p. 1) After the exam, Dr. Roland concluded the following:

> **SUMMARY AND CONCLUSIONS:**
>
> Omer Dedajic is a 48-year-old married Bosnian National whose primary deterrent to competitive employment appears to be physical limitations due to injuries to the right arm. His depression is significant but does not preclude employment. By history, he is able to relate effectively to coworkers and supervisors. He has been a metal fabricator for much of his adult life but is unable to continue in that profession due to his injuries. Memory and intellect are intact for purposes of employment. A payee is not indicated.
>
> **DIAGNOSIS:**
>
> Axis I: Depressive Disorder NOS [DSM IV 311].
>
> Rule out Major Depressive Disorder, single episode with moderate intensity [DSM IV 296.22].
>
> Axis II: None.

Axis III: See medical records.

Axis IV Trauma during Bosnian Conflict, health, employment, economic.

Axis V: Current GAF: 55-60.

(Ex. 11, p. 5)

Defendants desired an independent medical examination of claimant by Charles Wadle, D.O., a board-certified psychiatrist. The examination occurred on October 6, 2014. Ms. Karmela Loftus served as the interpreter during the examination. Dr. Wadle administered the Minnesota Multiphasic Personality Inventory-2, (MMPI-2). The psychiatrist opined claimant's test scores were invalid and suggested a "faking bad" profile. (Ex. U, p. 34) Dr. Wadle opined claimant did not suffer from a psychiatric/mental condition that was related to his work injury. Dr. Wadle suggested claimant was "malingering." The psychiatrist indicated claimant could be suffering from chronic pain. (Ex. U, p. 34)

The results of the MMPI-2 test were forwarded to Daniel L. Ekstrom, a licensed psychologist. Mr. Ekstrom agreed the results of the MMPI-2 were invalid. However, Mr. Ekstrom opined:

> In the event an evaluator suspects malingering, it is incumbent the professional evaluates that possibility more completely. Although the MMPI-2 is an appropriate and useful instrument, it is inadequate and insufficient as a "stand alone" instrument to base the conclusion of malingering. There are many tests and procedures available to evaluators to test out the possibility of malingering. Other sources of information and tests or evaluation technique include: -Collateral information such as mental health treatment and evaluation records; medical records; and interviews with individuals familiar with the person. –Signs of malingering during interview. –Psychological tests/techniques such as: the Structured Interview of Reported Symptoms; the Negative Impression Scale of the Personality Assessment Inventory; Miller Forensic Assessment of Symptoms Test; and the Portland Digit Recognition Test. It does not appear such assessment was done.
>
> In Mr. Dedajic's case, unless there is broad based evidence he is malingering, the results of the MMPI-2 should be dismissed without bias. It should be understood that the only thing that an invalid protocol tells us about a test subject is the results do not represent an accurate picture of what the person is really like...

(Ex. 30, pp. 1, 2)

RATIONALE AND 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).

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 the fact. 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).

This case is complicated with many issues and so many experts who were retained by the parties to express their opinions. Defendants admit there is an injury to the right arm but they deny there was a work-related injury to the right elbow or right shoulder. Claimant also alleges he has a mental component to his claim. Defendants maintain any mental condition claimant may have is the result of a pre-existing condition or it is non-existent.

Claimant did complain to Dr. Johns about right shoulder pain as early as October 25, 2010. Dr. Johns was authorized to treat claimant's wrist. Clinical notes for Dr. Johns do not show another shoulder complaint until May 30, 2012. At that time, Dr. Johns explained he did not treat shoulder injuries but he recommended a referral to a specialist who would evaluate the shoulder.

Mr. Ragib Dedajic testified he attended many of claimant's doctors' appointments and he acted as an interpreter for his father. Ragib testified his father complained about his shoulder and elbow to Dr. Johns at almost every appointment.

Defendants selected Dr. Naylor as an orthopedic expert. He related the shoulder condition to the work injury. Dr. Naylor recommended surgery. Defendants did not authorize the surgery.

In lieu of the surgery, defendants retained the services of Dr. Neff to conduct a records review only. There was no examination of claimant. Dr. Neff based his opinions upon the mistaken belief the first time claimant voiced a complaint about his right shoulder was on May 30, 2012. Since Dr. Neff's opinions were based on an erroneous fact, his opinions must be discounted. Defendants, however, selected to accept the opinions of Dr. Neff over the opinions of Dr. Naylor. As a consequence, claimant sought medical care on his own.

Dr. Delbridge, another orthopedic surgeon, causally related claimant's shoulder condition to his work injury. Dr. Delbridge performed surgery on claimant's right shoulder. He had numerous opportunities to observe claimant both on and off the surgical table. Dr. Delbridge opined claimant had a permanent condition and the surgeon rated claimant as having a permanent impairment rating of 34 percent to the body as a whole. The opinions of Dr. Delbridge are given great deference.

Finally, there are the opinions of Dr. Nepola from the University of Iowa Hospitals and Clinics. Dr. Nepola is a well-respected orthopedic surgeon in this state. However, in the present case, it appears he provided two divergent opinions. One opinion supports claimant's argument the shoulder condition was caused by the work injury. The other opinion supports defendants' position the shoulder condition could not be related to the work injury. Because Dr. Nepola switched his opinions, not as much weight is accorded to his expert opinions. It is difficult to know why he changed his opinions on causation.

Therefore, in light of the many expert opinions from various orthopedists, as well as the lay testimony of claimant and Mr. Ragib Dedajic, it is the determination of the undersigned; claimant's work injury not only affected the right wrist and the right elbow but also the right shoulder as well. As a consequence, claimant's injury involves an injury to the body as a whole.

The next issue for resolution is whether claimant's work injury contemplates a mental or psychological component. Again, there are multiple experts expressing opinions for all the parties. There is truly "the battle of the experts in the present case."

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Claimant initially expressed problems with depression and anxiety to his family physician, Dr. Bogdanic. The family doctor prescribed Wellbutrin. (Ex. 3, p. 16) Claimant's symptoms waxed and waned with time. He experienced "good days and bad days." Once he commenced taking 150 mg of Wellbutrin, his mood stabilized. (Ex. 3, p. 22)

In December 2011, claimant felt the need to seek out the services of a psychiatrist. He commenced treatment with Dr. Doumanian on his own. She continued to treat claimant for depression, anxiety and posttraumatic stress disorder. There is no question the posttraumatic stress disorder ensued following the atrocities claimant witnessed during the war in Bosnia. (Ex. 9, p. 8) Claimant admitted to flashbacks and nightmares involving events that occurred during the war. Nevertheless, Dr. Doumanian opined claimant suffered from depression because of his work-related injury and his personal financial matters following his work injury. Dr. Doumanian opined claimant's emotional and psychological status prevented him from working. Dr. Doumanian did not find claimant to be a "malingerer." The psychiatrist actively treated claimant for more than three years.

Dr. Roland, a licensed psychologist, examined claimant on one occasion to determine if claimant's mental status would preclude claimant's employability. Dr. Roland found claimant's memory and intellect to be intact for purposes of employment. (Ex. 11, p. 5) Claimant was diagnosed with a depressive disorder. (Ex. 11, p. 5) The cause of the depression was not discussed.

Defendants did not accept claimant's mental claim as compensable. Dr. Wadle was retained as an expert by defendants. He performed a records review; later he conducted one personal examination of claimant and he administered the MMPI-2. Dr. Wadle determined the MMPI-2 test results were invalid, and the scores indicated

claimant was in a malingering category. Dr. Wadle opined claimant had no psychiatric or mental condition that was work related. The psychiatrist did consider a possible chronic pain condition as an explanation for claimant's symptoms.

Counsel for claimant had the results of the MMPI-2 forwarded to a licensed psychologist of his own choosing, Daniel L. Ekstrom. Mr. Ekstrom did not interview claimant but rather reviewed the psychological test scores. Mr. Ekstrom agreed the results of the test were invalid but the results did not necessarily demonstrate claimant was malingering. There could have been other explanations for the invalid results, the psychologist opined.

After considering all of the experts who were family physicians, psychiatrists or psychologists, this deputy accords the most weight to the opinions of Dr. Doumanian. She had many counseling sessions with claimant and spoke to him in his native language. There was no need for an interpreter during their many sessions. Dr. Doumanian treated claimant for more than three years. The psychiatrist had ample time to observe claimant, listen to his conversations, engage in therapy sessions, prescribe the necessary medications, and clinically note claimant's reactions to the medications prescribed. Dr. Doumanian opined claimant's condition was permanent in nature. She noted claimant's emotional and psychological condition impacted his ability to seek and maintain employment.

In light of the evidence placed before this deputy, it is determined; claimant has a mental or psychological condition that pre-existed his work injury but was materially aggravated, accelerated, worsened or lighted up so that it results in a disability for which claimant is entitled to recover workers' compensation benefits.

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.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence and physical capacities would otherwise permit the employee to perform. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability. Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 19. 1982).

In the case before this deputy, claimant has only worked in construction since immigrating to the United States. Administrative notice may be taken that construction is heavy work and is considered highly hazardous work by OSHA. Claimant is right-hand dominant. He is severely restricted with the use of his right arm and right shoulder. Larson Construction did not have any jobs for claimant to perform, once he sustained his work injury. The company terminated claimant.

Retraining is out of the question for claimant. He is 52 years old and is considered an older worker. He understands some English and he speaks some conversational English. However, he does not read and write in English. He has taken some English as a second Language classes, but he has not been successful in learning enough English for claimant to accept a position where he would be required to read and write.

Claimant made reasonable attempts to secure other employment. He testified he sought other employment. Claimant was not successful in obtaining a job. (Transcript, pages 96-97)

Additionally, there are the psychological issues claimant faces with respect to depression and anxiety. Dr. Doumanian has treated claimant for depression, anxiety, attention and concentration deficits, and the pre-existing posttraumatic stress disorder. According to the psychiatrist, claimant struggles with the everyday tasks of living and functioning in his community. It is not feasible for him to sustain a full-time job in the labor market.

Therefore, it is the determination of the undersigned; claimant has sustained a permanent and total disability commencing from October 15, 2010, the date of the work injury, and payable at the stipulated weekly benefit rate of $389.74 per week.

Defendants shall take credit for all benefits paid to date.

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).

Claimant is requesting the payment of medical expenses as detailed in Exhibit 24.

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 liability for all medical treatment with the exception of the treatment for the right wrist/arm. They are now liable for all causally related medical expenses necessary to treat the right arm, right shoulder, and claimant's mental and psychological condition. The medical costs also include costs incurred for medical mileage. Defendants shall reimburse claimant for his out-of-pocket costs. Defendants shall reimburse Iowa Care and/or any medical providers who have not received payment for services rendered to claimant for his work-related conditions.

Claimant is requesting alternate medical care pursuant to Iowa Code section 85.27. He is requesting care with Dr. Delbridge and Dr. Doumanian. Since those two physicians have been treating claimant over the course of the last three years, there is no reason to transfer care to any other providers. Defendants lost the right to control the medical care when they denied treating claimant for any issue but the right wrist. Claimant's request for alternate medical is granted.

The final issue is the taxation of costs pursuant to Rule 876-4.33 of the Iowa Administrative Code. 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. The following costs are taxed to the defendants:

7/5/12	Health Port	$22.00
	Psychiatry Records from Covenant Clinic	
6/14/13	Iowa Workforce Development	$100.00
	Filing fee for petition	
	Certified postage fee for petition	$6.31

10/29/13	RCI Fee for bills from Radiology Consultants of Iowa	$20.00
11/8/13	St. Paul Radiology/Midwest Radiology Fee for medical records	$10.75
2/27/14	University of Iowa Hospitals and Clinic Fee for medical records	$21.00
3/20/14	Cedar Valley Medical Specialists Fee for medical records from Dr. Delbridge	$28.00
5/27/14	Dr. Valentina Doumanian Fee for Dr. Doumanian's preparation of report dated 6/10/14	$80.00
6/2/14	Wheaton Franciscan Healthcare Fee for Covenant Clinic Psych records	$21.40
6/10/14	Cedar Valley Medical Specialists Fee for Dr. Delbridge's report dated 6/9/14	$775.00
6/18/14	Dr. Vinko Bogdanic Fee for medical records	$20.00

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant permanent and total disability benefits to claimant from October 15, 2010, at the weekly stipulated benefit rate of three hundred eighty-nine and 74/100 dollars ($389.74) per week and continuing for the duration of claimant's permanent and total disability.

Defendants shall take credit for all benefits paid to date.

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

Defendants shall pay accrued medical costs, including medical mileage as detailed in the body of this decision.

Alternate medical care is granted as detailed in the body of this decision.

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

Defendants shall file all reports as required by this division.

Signed and filed this 11th day of January, 2016.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.