BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JANET VESEY, Claimant, vs. JOHN DEERE DAVENPORT WORKS, Self-Insured Employer, Defendant.	File Nos. 5046996, 5046997, 5046998 A R B I T R A T I O N D E C I S I O N Head Note No.: 1402.30

STATEMENT OF THE CASE

Janet Vesey, claimant, filed three petitions in arbitration seeking worker's compensation benefits from John Deere Davenport Works, as her self-insured employer. This case proceeded to an arbitration hearing on April 28, 2015, in Davenport, Iowa.

Claimant testified on her own behalf and called her daughter, Marie Vesey, to testify. Defendants called Kent Paulson and Lester Kelty, M.D. to testify. Claimant objected to Dr. Kelty being called to testify at the hearing, asserting that he had not offered a causation opinion prior to trial and that he should not be permitted to do so at the time of trial. The undersigned overruled claimant's objection as noted in the hearing transcript and Dr. Kelty was permitted to testify.

Claimant offered exhibits 1 through 13. Defendants objected to exhibit 8 as including hearsay. Defendants' objection was overruled and claimant's exhibits 1-13 were all received into the evidentiary record.

Defendant offered exhibits A through W. Defendant's exhibits were received into the evidentiary record without objection.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements. The evidentiary record closed at the end of the arbitration hearing but this case was not considered fully submitted until service of the parties' post-hearing briefs on June 19, 2015.

ISSUES

Claimant alleged three separate dates of injury. However, this case involves a cumulative injury claim and the three dates of injury represent alternate theories for the proper legal injury date. The disputed issues are similar in each of the three cases and will be analyzed simultaneously to avoid unnecessary duplication in this decision. The parties submitted the following disputed issues for resolution:

1. Whether the medical causation opinions offered by Lester Kelty, M.D. should have been excluded.

2. Whether claimant sustained a cumulative injury to her bilateral arms, which arose out of and in the course of her employment with John Deere Davenport Works.

3. The proper legal cumulative injury date for this alleged work injury.

4. Whether claimant gave timely notice of the alleged work injury, including an assertion by claimant that the discovery rule should extend her notice period.

5. Whether these claims are barred by the statute of limitations, including an assertion by claimant that the discovery rule should extend her limitations period.

6. Whether the alleged injury is the cause of temporary disability.

7. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

8. The proper commencement date for permanent disability benefits, if any are awarded.

9. Claimant's entitlement to claim certain alleged dependents as exemptions and the resulting worker's compensation rate.

10. Whether claimant is entitled to an award of past medical expenses.

11. Whether claimant's costs should be assessed against defendants.

FINDINGS OF FACT

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

The initial factual disputed issue presented by the parties for resolution is whether Janet Vesey's bilateral carpal tunnel syndrome arose out of and in the course of her employment with John Deere Davenport Works (John Deere). Claimant

contends that she suffered a cumulative trauma as a result of work duties at John Deere. John Deere denies that the work activities performed by claimant represented a substantial cause of claimant's bilateral carpal tunnel syndrome.

Janet Vesey started employment with John Deere in 2004. She initially worked as a fork-truck driver. However, after about 90 days on the job, she was transferred to an assembly line position. In that capacity, she assembled various hoses, pumps, and parts onto different engines being manufactured at the John Deere plant. (Ex. P, p. 67) Ms. Vesey performed the cab line assembly job from 2004 until 2006.

In 2006, Ms. Vesey was transferred from the cab line assembly position back into a fork truck driver position. After a few years driving a fork truck, Ms. Vesey was transferred to a loader line assembly job, where she assembled both large and small engines. She worked assembly on the loader line for only a few months in 2009. (Ex. P, p. 68; Claimant's testimony) She was unable to meet quality and production standards. As a result, she was ultimately disqualified from the assembly position and was moved back to a fork truck driver position. (Ex. S (deposition transcript, pp. 20-26)) She continued in that capacity at the time of hearing. (Claimant's testimony)

In 2009, Ms. Vesey experienced symptoms in her hands and arms. She sought medical consultation at the John Deere medical clinic and reported those symptoms to her personal physician. Ms. Vesey testified that she told Jack Luke, M.D., the physician at John Deere's medical clinic, that her hands hurt and that they felt swollen and numb. (Claimant's testimony) Dr. Luke's medical note indicates that claimant reported, "bilateral hand pain and swelling for weeks, but this has drastically improved by her account since she changed jobs recently." (Ex. C, p. 14) Dr. Luke noted that claimant's symptoms were "virtually resolved" and that claimant had an "unremarkable exam" as of May 27, 2009. (Ex. C, p. 14) No significant or ongoing medical care was rendered between 2009 and 2012 for carpal tunnel symptoms.

Ms. Vesey sought medical attention in John Deere's medical clinic again between August 2009 and periodically through April 8, 2013. Those medical notes make no reference to complaints of symptoms in claimant's hands or arms. (Ex. C, pp. 13-14) No other medical records are in evidence suggesting significant ongoing treatment and symptoms after claimant rotated back to a fork truck driver position in 2009.

In 2012, claimant reported symptoms in her hands to her personal physician. He ordered an EMG, which occurred on October 26, 2012. The EMG demonstrated evidence of bilateral carpal tunnel syndrome. (Ex. 2, p. 69) In early April 2013, claimant's personal physician referred her for evaluation by Robert Milas, M.D. Dr. Milas evaluated claimant on April 18, 2013, and diagnosed her with bilateral carpal tunnel syndrome. (Ex. 3, pp. 70-71)

The next day, on April 19, 2013, Ms. Vesey returned to the John Deere medical clinic and reported bilateral hand and arm pain since at least 2009. John Deere

ultimately denied liability for this claim and claimant sought surgical consultation with an orthopaedic surgeon, Thomas L. VonGillern, M.D.

Dr. VonGillern concurred with the diagnosis of bilateral carpal tunnel syndrome. He performed a right carpal tunnel release on June 6, 2014, followed by a left carpal tunnel release performed on June 27, 2014. (Ex. 4, pp. 80-81, 83-84) Dr. VonGillern has not offered a causal connection opinion or rendered an opinion about whether claimant has any residual permanent impairment or permanent disability. However, on August 4, 2014, Dr. VonGillern released claimant to return to work without medical restrictions. (Ex. 4, p. 85)

Claimant did return to work as a fork truck driver for John Deere and continues working without restrictions as of the date of this arbitration hearing. However, Ms. Vesey testified that she has ongoing symptoms in her hands, including perceived weakness. She testified that she has difficulty switching out propane tanks on her forklift because her hands are weaker than they used to be. (Ex. P, p. 79 (Depo., Tr., pp. 87-88))

The parties present a classic case of competing experts. Claimant produces medical reports and opinions from Robert W. Milas, M.D. Dr. Milas is a neurosurgeon, who initially evaluated claimant on referral as a patient on April 18, 2013. Dr. Milas did not ultimately provide treatment to claimant. However, he re-evaluated claimant for an independent medical evaluation on March 16, 2015. In his initial consultation report, Dr. Milas notes, "The patient feels that this is a Worker's Comp issue." (Ex. 3, p. 71) However, Dr. Milas did not specifically offer an opinion or analysis of whether the bilateral carpal tunnel was work related in his initial consultation report.

In his subsequent March 16, 2015, report, Dr. Milas opines, "In my original consultation, I did feel that this was a work related event and still feel that the bilateral median nerve dysfunction is related to her work at John Deere." (Ex. 3, p. 76) Dr. Milas offers no further analysis of the causal connection issue and no further explanation as to which of claimant's job duties he believes caused the bilateral carpal tunnel or why it has occurred.

John Deere offers the opinions of two physicians, Lester Kelty, M.D. and Christine C. Deignan, M.D., both of whom opine that claimant's work activities at John Deere did not cause her bilateral carpal tunnel syndrome. Dr. Kelty and Dr. Deignan are both occupational medicine physicians and both have worked at the on-site clinic at John Deere's plant. Dr. Kelty has provided treatment to claimant at that on-site clinic, but has not specifically rendered care as a treating physician for her bilateral carpal tunnel.

Dr. Kelty's nurse practitioner evaluated claimant for purposes of this case on August 5, 2014. The purpose of that evaluation was a return to work evaluation. As a result of this examination, the nurse noted on August 5, 2014, that claimant "feels she is ready to safely return to regular duty." (Ex. C, p. 11) The nurse recorded that Ms.

Vesey denied any numbness or tingling or any activity restrictions resulting from the bilateral carpal tunnel and surgical releases. She noted full range of motion in claimant's fingers, hands and wrists. She recommended getting a copy of the work release issued by Dr. VonGillern but opined that claimant could return to work regular duty as of August 5, 2014. (Ex. C, p. 11)

Dr. Kelty performed a job site visit on June 25, 2014. He notes that claimant worked on a small engine assembly line and noted that claimant's job required connecting various parts to the engine. According to Dr. Kelty's note from this job site visit, he observed that the employee "is never doing exactly the same task repetitively. Engine is at comfortable level. There is no heavy lifting." (Ex. C, p. 11)

At trial, Dr. Kelty testified about his job site visit and observations. He testified that he watched an employee perform job related tasks for a period of approximately 20 minutes in June 2014. He noted that an employee performing claimant's assembly job did not perform the same tasks with his or her hands repetitively. Dr. Kelty testified that the work risk factors that can cause carpal tunnel include highly repetitive actions, involving the same motion over and over, as well as the use of high force and/or awkward positioning of the hands.

Having viewed the job duties performed by claimant while on the assembly line, Dr. Kelty opined that those job duties did not involve repetitive activity but involved installation of a variety of different parts. Dr. Kelty also opined that the work he observed did not involve forceful work or a lot of work in awkward positions or involving awkward movements. Dr. Kelty opined that claimant's work as an engine assembler was not a substantial cause of her development of bilateral carpal tunnel syndrome.

Dr. Kelty also testified that claimant's work activities as a fork truck driver did not include significant risk factors for the development of carpal tunnel syndrome. He noted that he was familiar with the fork truck driver job duties and they did not involve highly repetitive activities or work in unusual hand positions.

Dr. Deignan performed an independent medical evaluation of claimant on February 23, 2015, and authored a report following that evaluation dated March 17, 2015. (Ex. R) With respect to the issue of causation of claimant's bilateral carpal tunnel syndrome, Dr. Deignan opines:

> According to the Department of Labor, repetitive work involves doing fundamentally the same activity more than 50% of the day. Highly repetitive work involves doing the same task every 30 seconds. An essential part of this definition is not only the frequency, but that the wrists are in the same position while performing the work.
>
> When an individual develops bilateral carpal tunnel syndrome it is more likely due to a personal condition rather than a work exposure. A personal condition would affect both hands equally. To say that the

bilateral condition is due to occupational use would require that causation for each hand be considered independently. There are very few jobs that require sustained motion of both the dominant hand and the non-dominant hand.

Janet Vesey worked performing assembly on the engine line for a very brief period in 2009. A jobsite visit was performed on February 23, 2014. Activities required were observed to be quite varied. The definition of highly repetitive is performing the same activity at a rate of every 30 seconds. Building the engine requires retrieving parts and then putting them in place with 2 to 4 bolts in various orientations. Each hand needs to be considered separately. She is right-hand dominant, and for many tasks, the left hand is used only rarely. The frequency of using vibratory tools is rare and the guns are battery-operated, handheld and very low intensity vibration.

In addition, Janet Vesey performed assembly tasks on the engine line for only a few months in 2009, three years before she reported symptoms of numbness in 2012. When Ms. Vesey was examined by Dr. Luke she had no complaints of numbness and the examination was normal. Pain and swelling are not symptoms of carpal tunnel syndrome. If carpal tunnel is caused by occupational activities, symptoms appear at the time of the work exposure. Symptoms do not have a delayed onset.

Her current job is fork truck driving. Fork truck driving is not an activity that causes carpal tunnel.

(Ex. R, p. 99)

Given the above analysis, Dr. Deignan opines, "Janet Vesey's bilateral carpal tunnel syndrome is not caused by her work activities at John Deere Davenport Works, not the activities performed for assembly on the engine line in 2009 and not the activities of her current job assignment as a fork truck driver." (Ex. R, p. 100)

As a treating physician, Dr. Milas may have some advantages because he evaluated claimant more than once. In this instance, Dr. Milas evaluated claimant twice, both before and after bilateral carpal tunnel releases were performed. He did not perform the surgeries to which claimant submitted. Arguably, Dr. Milas' credentials are superior. He is a neurosurgeon that performs carpal tunnel releases. Neither Dr. Kelty nor Dr. Deignan is a surgeon.

On the other hand, Dr. Kelty and Dr. Deignan both personally observed the job requirements of claimant's position as an assembly worker. Claimant critiques those observations because they occurred long after claimant left the assembly line and urges that there have been changes on the assembly since 2009. On the other hand, claimant did not report a work injury until long after she left the assembly line. There is

no evidence that there were significant modifications to the manner in which tasks were performed, though there is some evidence that job duties were assigned to different personnel than at the time claimant worked on the assembly line.

Dr. Milas, by contrast, did not observe any of the job duties claimant performed on the assembly line. While claimant's critique may have some validity as to the changes in assignments on the line, Dr. Kelty and Dr. Deignan clearly had better and first-hand information about the manner, timing, and pace at which tasks were performed by claimant on the assembly line. Dr. Milas did not have this advantage when considering the cause of claimant's bilateral carpal tunnel syndrome.

Dr. Milas' credentials and status as a treating surgeon when compared to the personal observations and knowledge of Dr. Kelty and Dr. Deignan could make for a difficult credibility determination. However, I find that there is a factor that clearly weighs in favor of Dr. Deignan's opinions over those of Dr. Milas in this case. When I review the competing explanations of causation offered, I find the causation opinions offered by Dr. Deignan to be much more thorough.

When I consider opinions pertaining to permanent impairment, I find Dr. Deignan's opinions to be far more credible than those offered by Dr. Milas. For instance, Dr. Milas indicates that he is utilizing page 492 of the AMA Guides, Sixth Edition. Page 492 of the AMA Guides, Sixth Edition, is a glossary of terms and clearly not applicable for rendering an impairment rating for bilateral carpal tunnel. If he utilized the AMA Guides, Sixth Edition, Dr. Milas' opinion is incomprehensible and not credible as stated.

Rather, as hypothesized by Dr. Deignan, I suspect that Dr. Milas actually intended to refer to page 492 of the AMA Guides, Fifth Edition. Even if I assume that to be the case, I have a hard time accepting Dr. Milas' impairment rating. First, he renders a permanent impairment rating equivalent to 20 percent of each arm. Yet, claimant has been released to return to work without restrictions and has continued to work without restrictions since August 2014. It seems highly improbable that claimant has a significant permanent impairment in both arms yet requires no permanent work restrictions. I recognize the claimant's testimony about perceived loss of strength in her hands. However, Dr. Milas' impairment ratings appear inconsistent with claimant's ability to perform activities of daily living, including work activities, since her bilateral carpal tunnel releases.

Moreover, Dr. Milas appears to utilize Table 16-15 on page 492 of the AMA Guides, Fifth Edition. That table provides the maximum permanent impairment that can be rendered for various peripheral nerve injuries. In order to apply the impairment ratings identified in Table 16-15, a physician must also utilize Table 16-10a, Table 16-11a and multiply the sensory and motor deficits identified in those tables by the maximum impairment listed in Table 16-15.

Dr. Milas makes no reference to Table 16-10a or Table 16-11a. He offers no explanation of how he reached his 20 percent permanent impairment ratings for each hand. It seems odd that both hands would have exactly the same permanent impairment rating given the variables involved. Certainly, some explanation was needed from Dr. Milas to make this comprehensible and credible.

Dr. Milas also discusses claimant's purported loss of grip strength as a potential basis for permanent impairment. Yet, page 494 of the AMA Guides, Fifth Edition, specifically states, "In compression neuropathies, additional impairment values are not given for decreased grip strength." Dr. Milas makes no reference to this statement in the AMA Guides and provides no explanation why he discusses grip strength as a potential impairment rating for claimant's bilateral carpal tunnel syndromes.

On page 495, the AMA Guides, Fifth Edition, also provides a very specific analysis of carpal tunnel syndrome and a specific explanation of how it should be rated by a physician. Dr. Milas does not refer to that section of the AMA Guides, Fifth Edition. He does not explain how, or if, he implemented that section of the AMA Guides, Fifth Edition.

Finally, it appears that Dr. Milas combined the permanent impairment ratings without utilizing the combined values chart and instructions contained in the AMA Guides, Fifth Edition. In total, I find Dr. Milas' permanent impairment rating to be inflated, inconsistent with the realities of claimant's residual functional abilities, and not credible.

By contrast, Dr. Deignan provides an explanation of the requirements of the AMA Guides, Fifth Edition. She clearly understands the proper technique and requirements to render an accurate permanent impairment rating. Her analysis and explanation of Dr. Milas' permanent impairment rating is superior to the explanation actually offered by Dr. Milas.

Dr. Deignan ultimately concludes that claimant has a zero percent permanent impairment rating in either arm following successful bilateral carpal tunnel releases. Dr. Deignan's zero percent permanent impairment ratings are consistent with someone that has had a good surgical result, substantial elimination of symptoms following surgery, and returned to work without restrictions for an extended period of time. Although she contradicted it somewhat during her trial testimony, claimant testified in her February 6, 2015, deposition that she no longer has numbness in her hands. (Ex. P, p. 78 (depo. tr., p. 81)) At hearing, claimant testified that her right hand is "fine" now. (Claimant's testimony) Dr. Deignan's opinions are consistent with claimant's testimony in both of these respects.

Considering her ability to personally view the workplace and job requirements, as well as the thoroughness of her causation opinion and clearly superior understanding and application of the AMA Guides, I find Dr. Deignan's opinions to be more credible than those of Dr. Milas in this case. Dr. Kelty's opinions certainly bolster and support

those offered by Dr. Deignan. However, I find Dr. Deignan's opinions to be the most thorough and most convincing opinions in this record.

Therefore, having accepted Dr. Deignan's opinions as the most credible, I find that claimant did not prove she sustained bilateral carpal tunnel injuries that arose out of and in the course of her employment with John Deere. Having rendered this factual finding, all other disputed issues and factual issues are rendered moot.

CONCLUSIONS OF LAW AND REASONING

The initial disputed issue was resolved by the undersigned via oral ruling at the time of hearing. Specifically, claimant objected to permitting Dr. Kelty to testify at trial and to offer a causation opinion. Given Dr. Kelty's status as a treating physician, claimant had the opportunity to interview Dr. Kelty, solicit a report, or otherwise obtain his opinions prior to trial. Pursuant to 876 IAC 4.18, claimant always retained the right to depose Dr. Kelty.

Having now reviewed the exhibits, I note that Dr. Kelty performed a site visit and observed the job duties claimant performed at John Deere. In his July 9, 2014, note, Dr. Kelty noted that he had performed a job site analysis and stated, "EE is never doing exactly the same task repetitively. Engine is at comfortable level. There is no heavy lifting." (Ex. C, p. 11) It is a fair assumption and reading of that note that Dr. Kelty was viewing the job site and job duties for purposes of formulating a causation opinion. His comments about repetitiveness of the job duties were suggestive of his ultimate conclusions pertaining to carpal tunnel syndrome.

Claimant was certainly alerted to the likelihood that Dr. Kelty did not believe claimant's job duties were repetitive in nature and that he did not believe claimant's job duties were the cause of claimant's bilateral carpal tunnel syndrome. Claimant did not follow-up, attempt to depose Dr. Kelty, or take any other action to further investigate that issue. Similarly, claimant was allowed to cross-examine Dr. Kelty live at trial.

Claimant did not establish that she sustained substantial prejudice in allowing Dr. Kelty to testify at trial. Claimant introduced a causation opinion from Dr. Milas, which was authored after the job site analysis and note was prepared by Dr. Kelty. In fact, it appears that Dr. Milas was provided a copy of Dr. Kelty's office note documenting the job site analysis by claimant's counsel. (Ex. 3, p. 73)

Claimant did not request, or establish the need, to present rebuttal evidence or to suspend the evidentiary record to permit further evidence. Claimant did not move for continuance. Indeed, it appears that claimant's medical expert was provided the office note from Dr. Kelty and presumably considered that as part of the medical evidence when rendering his March 16, 2015, opinions. Therefore, I find that claimant failed to demonstrate any significant prejudice in permitting Dr. Kelty to testify. Exercising the agency's discretion, I conclude that it was appropriate to permit Dr. Kelty's trial testimony. Schoenfeld v. FDL Foods, Inc., 560 N.W.2d 595 (Iowa 1997).

The next disputed issue presented by the parties is whether claimant's bilateral carpal tunnel syndromes arose out of and in the course of her employment at John Deere.

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

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

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes

of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

In this case, I found that claimant failed to prove by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with John Deere. Instead, I found the most credible evidence in this record establishes that claimant's bilateral carpal tunnel conditions are not causally related to her work activities at John Deere. Therefore, I conclude that claimant has not established she suffered a compensable work injury or that she is entitled to any weekly or medical benefits.

All other disputed issues are rendered moot by the above findings and conclusions.

Ms. Vesey seeks assessment of her costs in these cases pursuant to 876 IAC 4.33(7). Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant has not proven entitlement to benefits in any of the litigated files. Defendants have not introduced any specific costs they seek to be assessed. Therefore, exercising the agency's discretion, I conclude that each party should bear its own costs.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing in any of the litigated files.

Each party shall bear their own costs.

Signed and filed this 4th day of September, 2015.

WILLIAM H. GRELL
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.