BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JEREMY DIRKS, Claimant, vs. ARCONIC, INC., Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File No. 5068838 ARBITRATION DECISION Head Note No.: 1803

STATEMENT OF THE CASE

Claimant, Jeremy Dirks, filed a petition in arbitration seeking workers' compensation benefits from Arconic, Inc., employer, and Indemnity Insurance Company of North America, insurance carrier, both as defendants, as a result of a stipulated injury sustained on September 17, 2017. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch. The record in this case consists of joint exhibits 1 through 6, claimant's exhibits 1 through 2, and the testimony of the claimant. The parties declined to submit post-hearing briefs.

ISSUES

The parties submitted the following issues for determination:

1. Whether the injury of September 17, 2017, is a cause of permanent disability;
2. The extent of permanent disability to claimant's right arm; and
3. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

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

Claimant's testimony was clear, direct, and consistent as compared to the evidentiary record. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 44 years of age at the time of hearing. He completed high school and undertook 1.5 years of college coursework, but did not obtain a degree or certification. Claimant is right hand dominant. His work history consists of labor positions at a grain CO-OP and meat packing plant prior to commencing employment at defendant-employer in 2004. At the time of his hire, claimant underwent a pre-employment physical and was found to have no limitations on his right upper extremity. Claimant worked full time for defendant-employer as an ingot complex operator. This position involves the melting of aluminum scrap and addition of alloys as directed by the customer. There are three positions within this classification; claimant rotates through the positions each week. (Claimant's testimony)

Job descriptions are in evidence for three ingot complex operator positions at defendant-employer. The three positions are differentiated by job title: mold shop, casting, and melter. The mold shop position is classified as light work, with frequent lift, carry, push, and pull of 0 to 10 pounds, and occasional push and pull of up to 20 pounds. The casting position is classified as light-medium work, with occasional push and pull of 0 to 10 pounds, and occasional lift and carry of up to 35 pounds. The melter position is classified as light-medium work, with occasional push, pull, lift, and carry of up to 35 pounds. (CE1, pp. 1, 3-6)

On September 17, 2017, claimant was working in the casting position and threw a bag of alloy into a furnace when he felt a snap and sharp pain down through his right arm. Claimant testified to extreme pain about the area his elbow met his lower biceps, with shooting pain up into the biceps. He immediately informed a supervisor and was sent to defendant-employer's medical department (medical department). (Claimant's testimony)

Claimant presented to the medical department and reported he felt a pop in his right bicep when throwing a 10-pound bag of copper. The provider noted swelling proximal to the elbow and the area was painful to the touch. Claimant was treated with icing, Naproxen, and reduced-pace work. (JE1, p. 1)

Claimant returned to the medical department the following day. The nurse referred claimant for same-day evaluation with Teresa Franzen, PA. Ms. Franzen assessed a right biceps strain, improving. No intervention was undertaken by Ms. Franzen; she directed claimant to continue care with the medical department's nursing staff. (JE1, p. 1)

Claimant continued to follow up with the medical department's nursing staff, with care including ice, heat, and ibuprofen. (JE1, p. 2)

On September 22, 2017, claimant returned to the medical department and reported that discomfort had decreased since the work injury, except for increased

bruising and pain in the antecubital area. (JE1, p. 2) Ms. Franzen ordered imaging of the right upper extremity. (JE1, pp. 2-3)

On September 28, 2017, claimant underwent MRIs of the right humerus and right elbow joint. The results of the humerus MRI were unremarkable. The MRI of the elbow joint, however, revealed a full-thickness tear of the biceps tendon, with retraction. (JE3, pp. 26-27)

Following receipt of MRI results, claimant was referred to Tobias Mann, M.D. at ORA Orthopedics. (JE1, p. 4) Claimant presented to Dr. Mann on October 3, 2017. Dr. Mann opined claimant's MRI revealed a full-thickness tear of the biceps tendon with retraction of approximately 5 centimeters. He recommended surgical repair. (JE5, pp. 31-32) In the interim, he released claimant to return to work without restrictions. (JE5, p. 33)

Claimant underwent surgery with Dr. Mann on October 11, 2017. Dr. Mann diagnosed right distal biceps tendon rupture and performed a repair. Following surgery, Dr. Mann prescribed pain medication, directed claimant to elevate his hand for 48 hours, limited claimant from heavy use of the right arm, and ordered therapy to commence the following week. (JE4, pp. 28-30)

Following surgery, claimant followed up periodically with the medical department. On October 13, 2017, it was noted claimant was taking hydrocodone and was under work restrictions limiting his hours over the following month. Thereafter, claimant reported continued improvement. Claimant's work remained restricted in hours and required mandatory splinting. By October 19, 2017, claimant denied pain, tingling, or numbness; he denied using pain medication. (JE1, p. 6) On October 20, 2017, claimant reported a small amount of pain on the inside of his upper arm at night, a complaint he attributed to the splint and wrappings. (JE1, p. 7)

Claimant presented to his initial physical therapy visit on October 20, 2017. At that time, he complained of dull, aching pain at the right elbow. Regular sessions commenced. (JE2, pp. 14-22)

On October 23, 2017, Dr. Mann referred claimant to a hand therapist to fashion an Orthoplast splint. He ordered continued physical therapy. Dr. Mann imposed work restrictions of no use of the right upper extremity, a four-hour maximum workday, and to wear the crafted splint. (JE5, p. 34) Claimant's pain initially increased following obtaining the new splint and commencing physical therapy. (JE1, p. 7)

At follow up on November 10, 2017, Dr. Mann recommended continued physical therapy. He ordered claimant to splint for two additional weeks and then use the device as needed. In terms of restrictions, Dr. Mann allowed for eight-hour workdays, but no gripping, grasping, or lifting with the right upper extremity. (JE5, p. 35)

Claimant continued to follow up periodically with the medical department. (JE1, pp. 8-11)

On December 12, 2017, Dr. Mann ordered continued physical therapy. He altered claimant's work restrictions to allow lifting of up to 25 pounds for 2 weeks, then raising the limit to 35 pounds for 2 weeks, and no restrictions thereafter. (JE5, p. 36)

Claimant testified he ultimately returned to his preinjury job, working the same hours and earning the same rate of pay. (Claimant's testimony)

On January 5, 2018, the physical therapy provider noted claimant had attended 29 sessions and met all goals. (JE2, pp. 23-25) His elbow range of motion was found to be within normal limits. Claimant was also tested to have 5/5 muscle performance in all measurements except pronation, which demonstrated 4/5 strength. (JE2, p. 23) Dr. Mann discontinued physical therapy as of January 17, 2018. (JE1, p. 13)

Claimant returned to Dr. Mann on January 23, 2018. Claimant denied any concerns and informed Dr. Mann he had returned to work full duty for several weeks, without issue. On examination, Dr. Mann noted: full forearm supination and pronation; full elbow range of motion; 5/5 strength in elbow flexion and extension; and 5/5 strength in forearm supination and pronation. Dr. Mann opined claimant could continue working without restrictions and discharged claimant from care, to return as needed. (JE5, p. 37)

On March 22, 2018, Dr. Mann authored correspondence regarding claimant's condition and the extent of any permanent impairment. Dr. Mann opined claimant had demonstrated 5/5 strength on examination, but indicated it was certainly likely that claimant had some subjective weakness of the right upper extremity. Dr. Mann indicated he anticipated claimant would continue to regain strength over the year-period following surgery; he expressed optimism that claimant would regain all strength. In terms of permanent disability, Dr. Mann opined claimant sustained zero permanent impairment given his full range of motion, ability to work without restrictions, and lack of sensory deficits, significant pain, or measurable weakness. (JE5, p. 38)

At the referral of his counsel, on October 25, 2019, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D., for an independent medical examination. Dr. Bansal authored a report containing his findings and opinions dated January 9, 2020. (CE2, p. 13) Dr. Bansal performed a medical records review. (CE2, pp. 8-10) He also interviewed claimant, who reported some residual limitations. Claimant described: weakness of the right arm and shoulder; the need to use his bilateral hands with certain activities such as lifting; soreness of the shoulder with carrying an item of much weight; numbness and tingling of the incision area; and that while he was able to lift 20 pounds, he developed shoulder soreness when done repetitively. (CE2, pp. 10-11) Dr. Bansal noted claimant had worked as a production operator for 15 years, working on furnaces in three different positions. Claimant indicated he had no problem doing his job, but that his arm became sore and his pace slowed when he overdid activities. Dr. Bansal examined claimant, and noted: tenderness to palpation of the antecubital fossa; full range of motion; loss of flexion strength, a deficit of 20 percent at the elbow; and intact sensation. (CE2, p. 11)

Following interview, records review, and examination, Dr. Bansal diagnosed a right distal biceps tendon rupture, status post repair. (CE2, pp. 11-12) Dr. Bansal endorsed Dr. Mann's maximum medical improvement (MMI) date of January 23, 2018. Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Tables 16-11 and 16-35, Dr. Bansal opined claimant sustained a 5 percent upper extremity impairment based upon a 20 percent deficit in flexion strength. He recommended restrictions of no lifting greater than 20 pounds with the right arm. (CE2, pp. 12-13)

Claimant testified he found Dr. Bansal's examination more thorough than Dr. Mann's final examination; he highlighted Dr. Bansal's use of tools in measuring range of motion and grip strength. (Claimant's testimony)

At the direction of defendant-employer, claimant underwent a right shoulder physical capacity evaluation on May 7, 2020. Claimant was found capable of performing occasional medium heavy work. (JE6, p. 39)

At evidentiary hearing, claimant testified he remains employed in his preinjury position, without restrictions or accommodations. While his work hours were down at the time of hearing, claimant attributed this fact to the broader economic downturn. Otherwise, his work hours had remained the same as pre-injury. Claimant testified he has experienced lasting complaints following the work injury, including loss of motion and strength. He testified to general loss of motion, particularly with extension of the arm; claimant indicated he did not appreciate deficits in flexion. Claimant testified he has also experienced loss of strength and grip with turning his wrist, for instance when turning a wrench. Additionally, claimant reported experiencing decreased strength, weakness, and fatigue at work, most notably with heavy lifting, pounding motions, and excessive activity. Outside of work claimant testified home improvement and vehicle repair projects take longer, as turning tools is now problematic. Despite these complaints, claimant was not under medical care at the time of hearing, had no plans to pursue care, and did not use medication or bracing on his right arm. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether the injury of September 17, 2017 is a cause of permanent disability.

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. 6.904(3).

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 suffered a stipulated right biceps tendon tear which required surgical fixation on October 11, 2017. Following a subsequent course of physical therapy, Dr. Mann released claimant to full duty work. At an evaluation on January 23, 2018, Dr. Mann found: full forearm supination and pronation; full elbow range of motion; 5/5 strength in elbow flexion and extension; and 5/5 strength in forearm supination and pronation. Dr. Mann subsequently opined claimant had no sustained permanent impairment, citing claimant's return to full duty work, full range of motion, and lack of sensory deficits, significant pain, or measureable weakness. Despite lacking measurable weakness, Dr. Mann indicated it was likely claimant suffered with some subjective weakness. Dr. Mann indicated strength could be regained for up to one year post-surgery and expressed hope claimant would regain all his strength.

Dr. Bansal examined claimant on October 25, 2019, more than two years' post-surgery. At that time, Dr. Bansal found a 20 percent deficit in claimant's flexion strength. Utilizing the AMA Guides, Tables 16-11 and 16-35, Dr. Bansal opined claimant suffered a 5 percent upper extremity impairment based upon a 20 percent deficit in flexion strength.

Claimant credibly testified to continued limitations in his strength and motion.

Review of the AMA Guides reveals that Table 16-35 is used to determine impairment of the upper extremity due to strength deficit from musculoskeletal disorders based on manual muscle testing of individual units of motion of the shoulder and elbow. Table 16-11 is used in conjunction with Table 16-35 to quantify severity grades.

Dr. Bansal's rating methodology is consistent with the AMA Guides and with claimant's reports of ongoing strength deficits. While Dr. Mann found no measureable impairment, he acknowledged claimant was likely experiencing subjective weakness. Dr. Mann indicated improvement could occur up to one year post-surgery and expressed hope that claimant would regain all strength. The evidentiary record, via Dr. Bansal's measurement of strength deficit and claimant's testimony, supports the conclusion claimant did not regain all his strength as Dr. Mann had hoped. The record also establishes claimant suffers from limitations in his function post-injury. While the limitations do not prevent claimant from working in his preinjury light-medium physical

demand level positions, claimant's ability to tolerate working at higher physical demand levels is unclear.

Following review and consideration of the entirety of the evidentiary record, I find claimant has met his burden of establishing the work injury of September 17, 2017, is a cause of permanent disability.

The next issue for determination is the extent of permanent disability to claimant's right arm.

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)-(u) or for loss of earning capacity under section 85.34(2)(v). 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*, Dr. Bansal's rating methodology is consistent with the AMA Guides and claimant's testimony. Dr. Bansal's examination of claimant's strength utilized specific measurements taken following the point when full strength should have been regained. Dr. Mann's impairment rating lacks the specificity of Dr. Bansal's and was rendered at a time that he acknowledged claimant likely continued to experience weakness. Despite this acknowledgement, Dr. Mann found no measureable weakness. On these facts, I find Dr. Bansal's opinion best reflects the extent of permanent impairment suffered by claimant as a result of the work injury.

Accordingly, I find claimant has sustained a 5 percent right upper extremity impairment as a result of the work injury on September 17, 2017. Such an award entitles claimant to 12.5 weeks of permanent partial disability benefits (5 percent x 250 weeks = 12.5 weeks), commencing on the stipulated date of January 23, 2018. The parties stipulated at the time of the work injury, claimant's weekly earnings were $1,550.72, and claimant was married and entitled to 4 exemptions. The proper rate of compensation is, therefore, $962.30.

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 cost of the filing fee ($100.00). Claimant prevailed on his claim for permanent partial disability benefits and as such, an award of costs is appropriate. The cost of filing fee ($100.00) is an allowable cost and is taxed to defendants.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing January 23, 2018, at the weekly rate of nine hundred sixty-two and 30/100 dollars ($962.30).

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall receive credit for benefits paid.

Defendants 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 ____17th____ day of March, 2021.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nick Avgerinos (via WCES)

Valerie Landis (via WCES)

Matthew Grotnes (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.