BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIPTON DOLDER, Claimant, vs. CITY OF DES MOINES, Employer, Self-Insured, Defendant.	: : : : : : : : : : : :	File No. 22002984.01 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1800, 1803, 2209, 2500

STATEMENT OF THE CASE

The claimant, Kipton Dolder, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer the City of Des Moines. Christopher Spaulding appeared on behalf of the claimant. Luke DeSmet appeared on behalf of the defendant. Also present was Tony Chiodo, a representative of the defendant.

The matter came on for hearing on January 17, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-3, and Defendants' Exhibits A-C. The defendant attempted to include a proposed exhibit D, which was a report from a physician. The claimant objected to the inclusion of the report in the record. The claimant argued that the report was dated January 13, 2023, was produced to the claimant on the same date, was late and therefore should be excluded pursuant to 876 Iowa Administrative Code 4.19. The undersigned agreed with the objection and proposed Defendant's Exhibit D was excluded from the record. The remainder of the exhibits were received into the record without objection.

The claimant testified on his own behalf. Edie Daniels was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

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

2. That the alleged injury is a cause of temporary disability during a period of recovery.

3. That the alleged injury is a cause of permanent disability.

4. That, if the injury is found to be compensable, the disability is a scheduled member disability to the left upper extremity.

5. That the commencement date for permanent partial disability benefits, if any are awarded is June 29, 2022.

6. That, at the time of the alleged injury, the claimant's gross earnings were one thousand four hundred twenty-five and 64/100 dollars ($1,425.64) per week, and that the claimant was married, and entitled to two exemptions. Based upon the foregoing, the parties believe that the weekly compensation rate is nine hundred eight and 74/100 dollars ($908.74) per week.

7. With regard to disputed medical expenses noted below:

    a. That the fees or prices charged by the providers are fair and reasonable;
    b. That the treatment was reasonable and necessary;
    c. Although disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses, and the defendant is not offering contrary evidence; and,
    d. That, although the causal connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.

8. That the costs listed in the claimant's exhibits have been paid.

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Whether the defendant is entitled to a credit is no longer in dispute. The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury arose out of, and in the course of, employment on September 28, 2021.

2. The extent of permanent disability, if any is awarded.

3. Whether the claimant is entitled to a reimbursement of medical expenses.

4. With regard to the disputed medical expenses:

    a. Whether the listed expenses are causally connected to the work injury.
    b. Whether the requested expenses were authorized by the defendant.

5. Whether the claimant is entitled to reimbursement of the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

6. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Kipton Dolder, the claimant, is a left hand dominant male who resides in Des Moines, Iowa, with his wife. (Testimony). He has several grown children. (Testimony). He graduated from high school in 1975. (Testimony). After graduation from high school Mr. Dolder worked in construction, drove a truck, and had a short stint with a railroad. (Testimony). He testified in his deposition that a number of these positions involved the use of vibratory tools. (Defendant's Exhibit C).

In 1989, Mr. Dolder began working as a "casual employee" for the defendant. (Testimony). In this role, he plowed snow at the airport and performed other cleanup work. (Testimony). During the summer, he worked in a lab testing concrete and soil samples. (Testimony).

Mr. Dolder became a full-time employee of the defendant in June of 1994. (Testimony). He began his work in the forestry department. (Testimony). As part of this job, he operated chainsaws, trimmed trees, hauled brush, and performed other heavy labor. (Testimony). During the summer, he worked between 6 and 12 hours per day. (Testimony). During the winter, he worked a 12-hour shift when he removed snow. (Testimony). He worked this job until 1996, at which time he became a medium equipment operator. (Testimony).

As a medium equipment operator, Mr. Dolder began by operating an alley road grader. (Testimony). This required him to use his hands to control things like the blade

of the grader. (Testimony). He also noted that the grader had significant vibration. (Testimony). Mr. Dolder then began working on an asphalt crew. (Testimony). This job required him to use vibratory tools, such as a jackhammer. (Testimony). He testified that he also ran a grader and an asphalting machine. (Testimony). This job required him to use his left hand significantly, as he had to steer with his left hand. (DE C:13-14). He estimated that he used a hand crank steering in a machine with significant vibration for eight to nine hours per day, and eventually four or five hours. (DE C:15). He described a number of other jobs that he did with the City of Des Moines that necessitated continual use of his left hand in order to operate medium equipment. (DE C). Mr. Dolder worked as a medium equipment operator until his retirement on July 5, 2022. (Testimony).

The City of Des Moines provided a job description for a medium equipment operator. (DE A:2). The position was described as one in which the employee operated "complex motorized construction and repair equipment…" (DE A:2). Medium equipment included: "motor patrol, two-yard loaders, motor graders in skilled blade work, wheeled tractors with backhoe attachments, truck or tractor and trailer combinations including the low-boy self-propelled roller, rotary snow plows, self-propelled bituminous mixers and pavers, planers, bulldozers, and other equipment of comparable difficulty." (DE A:2). Duties included snow removal, operating complex equipment, and grading. (DE A:2).

On September 27, 2021, Mr. Dolder reported to his supervisor, Tony Chiodo, that he was running a supply yard loader when he experienced numbness and tingling in the fingers of his left hand. (Joint Exhibit 1:1-2). A written report indicated that repetitive motion and vibration contributed to the injury. (JE 1:2).

Mr. Dolder reported to UnityPoint Health – Des Moines Occupational Medicine on September 28, 2021, due to reports of numbness and tingling in his left hand. (JE 2:3-4). He recounted his job history to Jon Yankey, M.D. (JE 2:3). He acknowledged a diagnosis of rheumatoid arthritis in 2014, along with a prior diagnosis of diabetes. (JE 2:3). He was on medication for both of these conditions. (JE 2:3). Mr. Dolder told Dr. Yankey that he could not recall a specific incident or date of the onset of his symptoms, but recounted that he began experiencing tingling in his left hand "about 3-4 weeks ago." (JE 2:3). His tingling involved his left thumb, index finger, middle finger, and ring finger. (JE 2:3). He described the tingling as mild and intermittent, but gradually worsening. (JE 2:3). Mr. Dolder previously visited his personal physician, who opined that the tingling was caused by "carpal tunnel." (JE 2:3). He used a wrist splint, which he felt provided him with some relief. (JE 2:3). Upon palpation, Dr. Yankey found no tenderness around the wrist on either hand; however, he did find arthritic changes at "multiple joints in both hands, especially at the second and third MCP joints of both hands." (JE 2:3). Dr. Yankey observed that the claimant had good and symmetrical strength in both of his grips and pinches. (JE 2:3). However, he noted that there was some decreased range of motion in the claimant's left wrist. (JE 2:3). Dr. Yankey reviewed the previously performed x-rays and opined that they showed "significant diffuse arthritic changes throughout the wrist and hand." (JE 2:3). Based upon his

examination, Dr. Yankey recommended that the claimant have an EMG and continue conservative treatment. (JE 2:4). Dr. Yankey also opined,

> [T]hat work relatedness of his [the claimant's] left hand tingling is undetermined at this time. Even though he claims that his work activities over the past approximately 25 years have been repetitive in nature as described above, I feel that his rheumatoid arthritis and diabetes mellitus may be significant factors in his left hand tingling.

(JE 2:4).

Mr. Dolder had an EMG at Central Iowa Neurology on October 25, 2021. (JE 3:7-9). The impression from the report was:

> 1) Moderate dysfunction of the left Median [*sic*] nerve at the wrist consistent with left sided Carpal Tunnel Syndrome.
> 2) Mild dysfunction of the left Ulnar [*sic*] nerve at the elbow consistent with left sided Cubital Tunnel Syndrome.

(JE 3:7). The examiner recommended "[c]lose clinical correlation" and a follow-up visit with Dr. Yankey. (JE 3:7).

On November 2, 2021, Mr. Dolder returned to Dr. Yankey's office for his left hand issues. (JE 2:5-6). Mr. Dolder told the doctor that his numbness and tingling was unchanged from his prior visit. (JE 2:5). Mr. Dolder attributed his injury to his work activities. (JE 2:5). Dr. Yankey reviewed the EMG, which showed moderate dysfunction of the left median nerve at the wrist, which was "consistent with left-sided carpal tunnel syndrome," and a mild dysfunction of the left ulnar nerve "consistent with left-sided cubital tunnel syndrome." (JE 2:6). Dr. Yankey provided diagnoses of the same, and opined that the EMG findings were consistent with Mr. Dolder's symptoms. (JE 2:6). Dr. Yankey attributed Mr. Dolder's symptoms to his rheumatoid arthritis and diabetes, and not his work activities. (JE 2:6). Dr. Yankey also cited to the claimant's significant smoking history as a factor in his left wrist issues. (JE 2:6). Dr. Yankey recommended that the claimant proceed to his personal physician for evaluation and treatment of his issues, provided the claimant with no work restrictions, and discharged him. (JE 2:6).

Gregory Yanish, M.D., examined the claimant on June 1, 2022, for his complaints of left hand numbness and tingling. (JE 4:10-16). Mr. Dolder provided Dr. Yanish with a hand-written job description. (JE 4:15-16). He told the doctor that work aggravated his symptoms. (JE 4:12). He also noted that his symptoms woke him at night. (JE 4:12). Dr. Yanish also reviewed the EMG findings, and noted a diagnosis of left carpal tunnel syndrome. (JE 4:12). Mr. Dolder conferred with Dr. Yanish regarding treatment options, and elected to proceed with a left endoscopic carpal tunnel release. (JE 4:12).

Mr. Dolder visited MercyOne Beaverdale Family Medicine on June 16, 2022, for a pre-operative screening. (JE 5:21-26). The report noted the claimant's history of poorly controlled diabetes. (JE 5:22). It also noted that Mr. Dolder's diabetes had worsened and was "not at goal," while his rheumatoid arthritis was stable. (JE 5:25). The doctor declared the claimant to be medically stable to undergo a left carpal tunnel release. (JE 5:26). This visit included a cervical spine x-ray, which showed mild degenerative disc disease at C6-7. (JE 5:27).

Mr. Dolder reported to West Lakes Surgery Center on June 21, 2022, for a left endoscopic carpal tunnel release, performed by Dr. Yanish. (JE 6:28-29). Dr. Yanish's preoperative and postoperative diagnosis was left carpal tunnel syndrome. (JE 6:28). There were no complications with the surgery. (JE 6:28).

On June 29, 2022, Mr. Dolder returned to Dr. Yanish's office following a left endoscopic carpal tunnel release one week prior. (JE 4:17-20). Mr. Dolder told the claimant that the surgery provided him with significant improvement in the paresthesias in his left hand. (JE 4:19). He performed some gentle range of motion exercises without complication. (JE 4:19). Dr. Yanish advised the claimant to continue the range of motion exercises, and noted that no formal therapy was necessary. (JE 4:20). Dr. Yanish discharged the claimant. (JE 4:20).

Mr. Dolder voluntarily retired from his employment with the City of Des Moines on July 5, 2022. (DE B:3). He testified in his deposition that he has no plans of seeking additional work. (DE C:7).

Dr. Yanish signed a letter drafted by the claimant's counsel on July 22, 2022. (Claimant's Exhibit 1:1-2). His signature on the missive was to indicate his accession to the opinions contained therein. (CE 1:1). Dr. Yanish reviewed the opinions of Dr. Yankey as to causation. (CE 1:1). Dr. Yanish agreed, that based upon a reasonable degree of medical certainty, that the work Mr. Dolder performed for the City of Des Moines over a 25-year period represented a "substantial casual, aggravating or accelerating factor in his development of carpal tunnel syndrome, [and] the need for the surgery…" that Dr. Yanish performed on June 21, 2022, and the permanent functional impairment suffered by Mr. Dolder. (CE 1:1).

On November 2, 2022, Mr. Dolder reported to the Iowa Injury Institute where Sunil Bansal, M.D., M.P.H., examined him for an IME. (CE 2:3-9). Dr. Bansal issued a report with his findings in December of 2022. (CE 2:9). Dr. Bansal began his report by reviewing Mr. Dolder's medical history. (CE 2:3-5). He also reviewed Mr. Dolder's job duties with the City of Des Moines. (CE 2:5). Mr. Dolder noted that he used a lot of vibratory machinery, including an asphalt machine. (CE 2:5). He also ran a loader and a road grader, which required constant hand control use. (CE 2:5). Mr. Dolder told Dr. Bansal that, "[a]s a result of his repetitive and physically demanding work activities, he was diagnosed [*sic*] left carpal tunnel syndrome. He developed numbness of his entire left hand, which included all of his fingers except for his small finger." (CE 2:5). Mr. Dolder noted his continued numbness and weakness in his left hand. (CE 2:5).

Attempting forceful gripping and turning caused Mr. Dolder to experience a "shock-lie [*sic*] pain." (CE 2:5).

Physical examination revealed mild tenderness to palpation on the volar aspect of the left wrist, but had full range of motion. (CE 2:6). Dr. Bansal observed a "loss of two-point sensory discrimination over the thumb, index, and long fingers." (CE 2:6). Dr. Bansal measured the claimant's grip strength, and found his right hand to have grip strength of 42 kg, 38 kg, and 41 kg, while his left hand had a grip strength of 33 kg, 31 kg, and 31 kg. (CE 2:6).

Dr. Bansal opined that Mr. Dolder's repetitive and physically demanding work with the City of Des Moines caused the claimant's left carpal tunnel syndrome. (CE 2:7). Dr. Bansal cited to the length of time in which the claimant worked for the City of Des Moines, and the vibratory tools used in his work. (CE 2:7). He further noted, "[h]e was engaged in job tasks for the City of Des Moines that are capable of increasing carpal tunnel pressures." (CE 2:8).

Dr. Bansal opined that Mr. Dolder suffered a permanent impairment to his left wrist and hand. (CE 2:7). Dr. Bansal used Tables 16-10 and 16-15 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to issue a permanent impairment rating. (CE 2:7). Dr. Bansal found that Mr. Dolder had a 10 percent sensory deficit for the first digit and second digit. (CE 2:7). Dr. Bansal noted a zero percent impairment for severity of the motor deficit. (CE 2:7). Dr. Bansal noted that the maximum upper extremity impairment due to sensory deficits in the median nerve below the mid forearm involving the radial and ulnar palmar digital nerves of the index and long fingers were 9 percent, while the thumb was 18 percent. (CE 2:7). Taking the previous information into account, Dr. Bansal provided the claimant with a 7 percent upper extremity impairment. (CE 2:7).

Dr. Bansal offered permanent restrictions for Mr. Dolder which included no lifting more than 15 pounds with the left hand, avoidance of gripping, turning or twisting with the left hand, and avoidance of vibratory tools with the left hand. (CE 2:8). Dr. Bansal opined that the claimant required no additional treatment for his left wrist. (CE 2:8). He also agreed with Dr. Yanish that the claimant achieved maximum medical improvement on June 29, 2022. (CE 2:8).

Mr. Dolder testified that he had no problems with his right hand. (Testimony).

The claimant testified that, at the time of the hearing, he experienced reduced strength in his left hand. (Testimony). He also described constant tingling in his left hand, problems opening bottles, and a feeling like his hand was falling asleep. (Testimony; CE C:8).

Mr. Dolder took turmeric for inflammation. (Testimony). He also took Aleve for pain. (Testimony). Upon cross-examination, Mr. Dolder admitted that he was

diagnosed with diabetes and rheumatoid arthritis several years prior to his carpal tunnel arising. (Testimony).

CONCLUSIONS OF LAW

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 Rule of Appellate Procedure 6.904(3).

Causation

Before beginning any analysis of the other issues, I must first examine whether the claimant's injury arose out of and in the course of his employment with the City of Des Moines. The claimant contends that his job duties caused his left carpal tunnel syndrome. The defendant alleges that the claimant's left carpal tunnel syndrome was caused and/or aggravated by his rheumatoid arthritis and diabetes, and that this did not arise out of, or in the course of his employment with the City of Des Moines.

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, that the employee's injuries arose out of, and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that an injury occurs "in the course of employment" when:

> it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d at 156 (Iowa 1997). When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

While a claimant is not entitled to compensation for the results of a preexisting 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). It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

There also is some discussion that the claimant may have sustained a cumulative trauma. While the claimant does not explicitly allege this, they seem to imply that the claimant may have sustained a cumulative trauma.

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 of all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or unusual occurrence. Injuries which result from

cumulative trauma are compensable. However, increased disability from a prior injury, even if brought about by further work, does not constitute a new injury. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by Iowa Code 85A is specifically excluded from the definition of personal injury. Iowa Code 85.61(4)(b); Iowa Code 85A.8; Iowa Code 85A.14.

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

In this case, the claimant worked in various capacities with jobs involving vibratory tools and using his hands. He then worked for the City of Des Moines in a casual capacity from 1989 to 1994. From 1994 to 2022, he worked in a full-time capacity for the City of Des Moines. The bulk of his time with the City of Des Moines was spent as a medium equipment operator. Based upon the claimant's credible testimony, he used his left hand on a regular, or near constant basis, in completing the tasks of his job. He also used a variety of vibratory tools, and operated equipment that caused him to experience significant vibration in his left hand, wrist, and arm. Mr. Dolder also used his dominant left hand in order to operate equipment on a regular basis. In fact, Mr. Dolder testified that he used his left hand to steer or operate equipment between four and nine hours per day over the years.

On September 27, 2021, the claimant reported to his supervisor that he was having numbness and tingling in the fingers of his left hand. A report outlining the injury indicated that repetitive motion and vibration contributed to his injury.

There are competing opinions as to causation in this matter. The first is from Dr. Yankey. Dr. Yankey examined the claimant initially after his reported injury, and noted that Mr. Dolder previously visited his personal physician who opined that the ongoing issues were "carpal tunnel." Mr. Dolder recounted that he began experiencing numbness and tingling about three to four weeks prior to his reporting the alleged injury.

He could not recall a specific event that led to the symptoms developing. Dr. Yankey opined during an initial visit that Mr. Dolder had arthritic changes in multiple joints of both hands, which was confirmed by imaging. Dr. Yankey ordered an EMG and opined that Mr. Dolder's pre-existing rheumatoid arthritis and diabetes were "significant factors" in the tingling he experienced.

The EMG showed that Mr. Dolder had left carpal tunnel syndrome and cubital tunnel syndrome. Dr. Yankey reviewed the EMG results and opined that they were consistent with the claimant's symptoms; however, he concluded that Mr. Dolder's symptoms were caused by his rheumatoid arthritis, diabetes, and significant history of smoking. Dr. Yankey then referred the claimant back to his personal physician for evaluation and treatment.

Mr. Dolder sought no care for his left wrist between November 2, 2021, and June 1, 2022, when he reported to Dr. Yanish's office. He explained in his deposition that he did not seek treatment during this time because he was waiting for a formal determination from the City of Des Moines as to his workers' compensation claim.

Mr. Dolder reported his continued complaints of left hand numbness and tingling to Dr. Yanish. He also provided Dr. Yanish with his job description, and told the doctor that work aggravated his symptoms. Dr. Yanish agreed with Dr. Yankey's diagnosis that the claimant suffered from left carpal tunnel syndrome. Dr. Yanish opined that a left endoscopic carpal tunnel release would be the next treatment step available to the claimant. The claimant wanted to proceed with surgery.

In June of 2022, Dr. Yanish performed a left endoscopic carpal tunnel release on the claimant. Mr. Dolder tolerated the procedure well. He followed up with Dr. Yanish after the surgery and was discharged from care on June 29, 2022, with no documented restrictions. The claimant then voluntarily retired from work with the City of Des Moines on July 5, 2022.

Dr. Yanish assented to opinions presented by claimant's counsel in a letter dated July 22, 2022. He agreed, that, based upon a reasonable degree of medical certainty, Mr. Dolder's work with the City of Des Moines over a 25 year period represented a "substantial causal, aggravating or accelerating factor in his development of carpal tunnel syndrome [and] the need for the surgery…" that Dr. Yanish performed in June of 2022. Dr. Yanish also agreed that the claimant suffered a permanent impairment from the work injury.

Dr. Bansal performed an IME on the claimant, and issued a report of his findings. Dr. Bansal is board certified in occupational medicine. As part of his report, Dr. Bansal reviewed medical records, and met with the claimant. Mr. Dolder told Dr. Bansal that he used a lot of vibratory machinery and operated certain equipment. Dr. Bansal also reviewed Mr. Dolder's job duties with the City of Des Moines. The claimant told Dr. Bansal that he developed numbness of his entire left hand, except for his small finger.

Dr. Bansal found the claimant to have mild tenderness to palpation on the volar aspect of his left wrist. He also observed Mr. Dolder to have reduced grip strength in the left hand. Dr. Bansal also found the claimant to have a loss of two-point sensory discrimination over his thumb, index, and long fingers.

Based upon his examination, and review of the medical records, Dr. Bansal opined that the claimant's repetitive and physically demanding work with the defendant caused his left carpal tunnel syndrome. Dr. Bansal noted the length of time which the claimant worked for the defendant, and the nature of the claimant's work. Dr. Bansal also concluded, "[h]e [Mr. Dolder] was engaged in job tasks for the City of Des Moines that are capable of increasing carpal tunnel pressures."

The defendant argued that Dr. Bansal and Dr. Yanish did not take into account the claimant's pre-existing rheumatoid arthritis or diabetes in coming to their opinions. However, Dr. Yanish would likely have been aware of the condition, as the claimant was required to have a pre-surgical physical examination. Additionally, based upon Dr. Bansal's report, it appears that he reviewed some medical records. The records in question mention the claimant's history of rheumatoid arthritis and diabetes.

The defendant did not provide any evidence that the claimant's rheumatoid arthritis or diabetes caused his left carpal tunnel syndrome. The opinions of Dr. Yankey simply declare that these are the issue, and provide no explanation as to why these conditions would cause the claimant's left carpal tunnel syndrome. The explanations of treating physician, Dr. Yanish, and Dr. Bansal are more persuasive than those of Dr. Yankey. Additionally, the claimant testified credibly that he worked with vibratory tools and used his left hand often during his work with the defendant. I conclude that the claimant's injury arose out of, and in the course of, his employment with the City of Des Moines.

This likely is a cumulative injury case, as the claimant did not recollect a specific injury or moment when his pain arose. He noted that he used vibratory tools and used his left hand for almost 20 years prior to the manifestation of his left carpal tunnel issues. The date of injury is likely September 28, 2021; however, it could be several weeks before this. There is inadequate evidence in the record besides one note in a medical visit that the pain began three to four weeks prior. September 27, 2021, is the date upon which Mr. Dolder notified his employer, and September 28, 2021, is when the claimant began receiving significant medical care for the condition. Therefore, September 28, 2021, is the date of injury for this cumulative injury.

Permanent Disability

Where an injury is limited to a scheduled member, the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Iowa Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code 85.34(2)(a)-(u), this agency must only consider the functional loss of the particular scheduled member involved, and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably language in Soukup v. Shores Co., 222 Iowa 272, 277, 268 N.W. 598, 601 (1936), which states:

> The Legislature has definitely fixed the amount of compensation that shall be paid for specific injuries … and that, regardless of the education or qualifications or nature of the particular individual, or of his inability … to engage in employment … the compensation payable … is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Iowa Code 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use of a member is equivalent to "loss" of the member. Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code 85.34(2)(w), the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969). The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup, 222 Iowa 272, 268 N.W. 598.

Iowa Code section 85.34(2)(x) provides that no agency expertise may be used in determining the amount of permanent partial disability. It also provides that the undersigned is obligated to use the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to award benefits for permanent partial disability.

Considering the parties stipulated that, if the injury arose out of and in the course of employment, the injury was a cause of permanent disability, I do not need to perform a causation analysis.

An injury to the wrist is to be compensated as an injury to the arm. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008). Iowa Code section 85.34(2)(m) provides that a permanent disability to the arm shall be compensated based upon 250 weeks.

The only doctor to provide an impairment rating was Dr. Bansal. He opined, that, based upon Tables 16-10 and 16-15 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Dolder sustained a 7 percent upper extremity impairment. Dr. Bansal based his opinion on sensory deficits to the first and second digit of Mr. Dolder's left hand, along with other nerve deficits.

Considering the stipulation of the parties and my previous findings, I award the claimant a 7 percent impairment to his left upper extremity. This equates to 17.5 weeks of permanent partial disability benefits (7 percent x 250 weeks = 17.5 weeks).

Payment of Medical Expenses

The claimant requests reimbursement for certain medical expenses. However, it is unclear as to what medical expenses the claimant wishes to be reimbursed for, as there are none included in the record.

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. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v. Vieth Construction Corp., File No 5044438 (App. May 27, 2016)(Claimant failed to prove causal connection between the injury and claimed medical expenses); Becirevic v. Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

It is unclear as to what medical expenses the claimant wishes to be reimbursed. Therefore, I decline to award medical expenses.

Reimbursement for IME pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . . An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the

reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

The claimant requests reimbursement for the IME expenses of Dr. Bansal. This amounts to two thousand six hundred thirty-seven and 00/100 dollars ($2,637.00). Dr. Yankey opined that the claimant's injuries were not caused by his employment with the City of Des Moines. Therefore, it is appropriate for the defendant to reimburse the claimant for the costs of Dr. Bansal's IME.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 3. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App., September 27, 2019).

The claimant requests reimbursement for the filing fee, the deposition transcript, and the costs of Dr. Yanish's conference and "report." I award the claimant costs for the filing fee of one hundred three and 00/100 dollars ($103.00). I decline to award the claimant costs for the deposition transcript, as the claimant did not present this evidence into the record. I also decline to award the costs of the claimant's phone conference with Dr. Yanish. The invoice provided in Claimant's Exhibit 3:16 only indicates charges for a conference. Based upon Young, only the report of a physician, and not the examination itself, can be assessed as a cost. Dr. Yanish did not draft the report, and charged for his time to conference with claimant's attorney.

ORDER

THEREFORE, IT IS ORDERED:

That the defendant shall pay the claimant seventeen and one half (17.5) weeks of permanent partial disability benefits at the agreed upon rate of nine hundred eight and 74/100 dollars ($908.74) per week commencing on June 29, 2022.

That the claimant's request for reimbursement of medical expenses is denied.

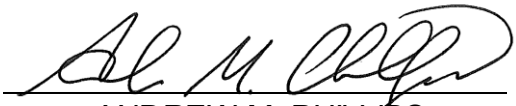
That the defendant shall reimburse the claimant two thousand six hundred thirty-seven and 00/100 dollars ($2,637.00) for the IME expenses of Dr. Bansal.

That the defendant shall reimburse the claimant one hundred three and 00/100 dollars ($103.00) for costs incurred.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable 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).

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this __10th__ day of February, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Christopher Spaulding (via WCES)

Luke DeSmet (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.