

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

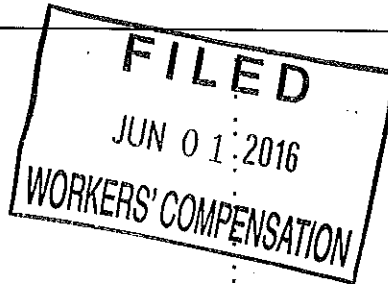
PAUL BELTZ,
Claimant,

vs.

B&B BEDDING, INC.,
Employer,

and

GRANITE STATE INSURANCE
COMPANY,
Insurance Carrier,
Defendants.



File No. 5054008

ARBITRATION

DECISION

Head Note Nos.: 1108.5; 1402.30

STATEMENT OF THE CASE

Paul Beltz, claimant, filed a petition in arbitration alleging injury to his right upper extremity, neck and whole body arising out of and in the course of his employment with defendant B&B Bedding, Inc., on January 14, 2014. Claimant seeks workers' compensation benefits from defendants, B&B Bedding, the employer, and their workers' compensation insurance carrier, Granite State insurance Company. The arbitration hearing was held on April 13, 2016, in Des Moines, Iowa.

Claimant was the only witness to testify at hearing. The evidentiary record also includes Claimant's Exhibits 1 through 17, which were received without objection, and Defendants' Exhibits A through P, which were admitted over claimant's objection to Exhibit A, page 3.

The parties also submitted a hearing report, which contains numerous stipulations. The parties' stipulations are accepted. No factual findings or conclusions of law will be made in this decision regarding the parties' stipulations.

Counsel for the parties submitted briefs on May 11, 2016, and the case was considered fully submitted on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Did the claimant sustain an injury to his neck that arose out of and in the course of his employment with defendant B&B Bedding on January 14, 2014?
2. Extent of entitlement, if any, to temporary total disability benefits regarding the neck injury?
3. Extent of entitlement, if any, to permanent partial disability benefits regarding the neck injury?
4. Is the claimant entitled to alternate medical care under Iowa Code section 85.27 regarding the neck injury?
5. Are permanent partial disability (PPD) benefits, if awarded, subject to apportionment under Iowa Code section 85.34(7)?

FINDINGS OF FACT

The undersigned, having listened to the testimony provided at hearing and considered witness credibility, and after reviewing all other evidence in the record, hereby finds as follows:

At the time of the hearing, claimant, Paul Beltz, was 58 years old. (Transcript page 14) He is right hand dominant. (Tr. p. 61)

Claimant has asserted an injury arising out of and in the course of his employment with defendant employer that occurred on January 14, 2014. The injury involves claimant's right upper extremity and neck. Defendants have stipulated to the existence of the right upper extremity injury. The fighting issue in this case is whether claimant sustained a neck injury as alleged.

Prior to January 14, 2014, the date of the injury herein, claimant sustained a right carpal tunnel injury that resulted in a carpal tunnel release procedure on September 22, 1995. (Exhibit 2, p. 6) The surgery was performed by Scott Neff, D.O. (Ex. 2, p. 6) On February 12, 1996, Dr. Neff assigned a 5 percent permanent impairment to the right upper extremity, and also recommended that claimant wear a padded glove when using vibratory tools. (Ex. E, p. 21) Claimant testified that he had no residual symptoms from this injury. (Tr. p. 64)

Also, while working for a prior employer, Pella Corporation, claimant made a claim concerning a neck and left arm injury. Claimant alleged that the neck injury occurred on or about September 1, 2005, and the left carpal tunnel injury occurred on or about June 28, 2006. (Ex. A, p. 9) These injuries resulted in a Compromise Settlement

with Pella Corporation, which was filed with this agency on December 13, 2007, and included payment of \$25,000 in exchange for resolution of both claimed injuries. (Ex. A, p. 10) The settlement documents reveal that an 8 percent permanent impairment rating concerning the neck injury was given by Dr. Stoken. (Ex. A, p. 9)

Claimant began working for defendant B&B Bedding in 2007 as a truck driver. (Ex. 14, p. 150) The defendants point out that claimant was seen by a chiropractor for upper back/neck pain on March 1, 2011, at the Oskaloosa Chiropractic Clinic. (Ex. D, p. 18-19) Claimant testified that he did not recall speaking to the chiropractor at that time about neck pain, but assumed that any such complaints were likely from driving. (Tr. p. 67) Although claimant could not say that all of the pain at that time came from driving for work, he believed at least part of it did. (Tr. p. 74)

Concerning claimant's employment with B&B Bedding, he began working as a truck driver in 2007. (Ex. 14, p. 150) B&B Bedding is in the business of hauling mulch, feed, grain products and other cargo. (Tr. p. 19; Ex. P. p. 29) Claimant testified that he felt B&B Bedding was "a great company to work for." (Tr. p. 19) Claimant drove a semi-tractor and trailer from Oskaloosa, Iowa, to various destinations around the mid-west. (Tr. p. 20) Claimant stated that about 60 percent of his travel was within Iowa. (Ex. P. p. 32-33) The remaining travel was outside of Iowa, from Minnesota to Mississippi and from Ohio to South Dakota, and points in between. (Tr. p. 20; Ex. P, p. 33) Claimant's job included using an end-loader and fork-truck to load the trailer, cleaning out the trailers with a scraper, shovel or broom and performing general maintenance on the semi-tractor, such as oil changes. (Tr. p. 20-21; Ex. P, p. 30-31)

Claimant had been treated for the work injury by Ze-Hui Han, M.D., of Iowa Ortho, who on March 27, 2015 placed a restriction on claimant of no use of the right upper extremity. (Ex. 4, p. 52) Claimant last worked for B&B Bedding on or about March 26, 2015, because the employer was unable to accommodate this restriction. (Tr. p. 72). Claimant's job had been held in limbo until he was done treating for his right arm. (Tr. p. 72) Claimant did not seek any other employment between March, 2015 and March, 2016. (Ex. P. p. 57) Claimant testified that he understood that he was terminated from B&B Bedding because the company was unable to accommodate his restrictions. (Tr. p 56, 72)

Following his termination, claimant requested and received letters of recommendation from the president of the company, the general manager, and the logistics manager. (Tr. p. 56-58; Ex. 16, p. 152-154) Each of the letters praise claimant as a good worker and for being knowledgeable about the trucking industry and state that he is no longer able to work for B&B Bedding due to an injury. (Ex. 16, p. 152-154) The undersigned understands that the injury referred to in the letters of recommendation is the January 14, 2014 work injury.

On the same day that claimant was terminated from B&B Bedding he sought assistance from Iowa Vocational Rehabilitation. (Tr. p. 58) Claimant had an appointment scheduled with a vocational counselor for April 20, 2016, seven days after

the arbitration hearing in this matter. (Ex. 17, p. 155) Claimant is understandably concerned that he will have difficulties finding employment in the trucking industry because of his restrictions. (Tr. p. 60) Likewise, he is concerned that if he were to try to return to the restaurant industry, which he has not been involved in for nearly 30 years, that he would have difficulty processing food and lose his grip on knives, pans and food containers. (Tr. p. 61)

In regards to the injury that is the subject of this litigation, on January 14, 2014, while working for the defendant employer, claimant was in the Chicago area to pick up a load of grain dust from a silo to bring back to Anamosa, Iowa. (Tr. p. 23) After his trailer was loaded, he walked around the trailer to cover it with a tarp and while doing so, he stepped in a hole that was covered in snow and grain dust and he fell. (Tr. p. 23-24) Claimant landed striking his elbow, his back and his head. (Tr. p. 24) The incident left claimant sore and with, what he described as a "goose egg," on his head. (Tr. p. 24) Although claimant was sore from the fall, he was concerned about getting on the road before a snow storm hit the area. (Tr. p. 25) Over the next two days, claimant drove to Anamosa, then to Belle Plain, Iowa, and then to the Oskaloosa headquarters. (Tr. p. 25) He reported the injury the day that it occurred to Kimberly Claypool. (Tr. p. 26) Claimant described Ms. Claypool as "dispatch." (Ex. P, p. 34) She is the logistics manager at B&B Bedding. (Ex. 16, p. 154)

Following the injury, claimant was seen at Mahaska Health Partnership on February 3, 2014, complaining of right elbow pain and numbness. (Ex. 3, p. 8) It is reported that "He slipped and struck the R elbow, while handling a tarp . . . Also has soreness in the R thoracic area with movement of the RUE at the shoulder." (Ex. 3, p. 8) On March 31, 2014, a referral was made for claimant to be evaluated by an orthopedic physician. (Ex. 3, p. 10) He was then seen by Dr. Han, at Iowa Ortho on April 30, 2014. (Ex. 4, p. 18)

Claimant had also seen Gary Kolosik, D.C., before and after the work injury, 11 times from April 5, 2011 to June 17, 2014, apparently on his own and not as an authorized treating provider regarding the work injury. (Ex. G, p. 30) From April 5, 2011 until September 24, 2013, claimant complained primarily of low back pain and stiffness. (Ex. G, p. 30) On January 24, 2014, ten days after the work injury herein, claimant saw Dr. Kolosik, and again complained of a stiff and sore low back "a few days ago" but there is no mention of neck pain or arm pain. (Ex. G, p. 30) On May 6, 2014, claimant was seen by Dr. Kolosik and at that time, about four months after the work injury of January 14, 2014, claimant is recorded as discussing "right neck with radiating arm pain – started after pulling a pallet jack – unloading a semi . . ." (Ex. G, p. 30) It is not clear from the record when the incident with the pallet jack occurred. However, this is clearly a different mechanism of injury compared to that which is alleged herein and has been described by the claimant at hearing, deposition and to medical providers. (Ex. P, p. 36; Ex. 3, p. 8; Tr. p. 23 – 24)

On May 16, 2014, claimant was seen by Dr. Han who recommended a right cubital tunnel release. (Ex. 4, p. 25) But, during the pre-operative evaluation, claimant noted chest pain. (Ex. 1, p. 36) He was referred for cardiac care and in June, 2014, he underwent a triple by-bass surgery. (Tr. p. 51-52; Ex. 1, p. 36-38) Claimant was off work after heart surgery and was returned to part-time work status on August 18, 2014, and unrestricted full-time status on September 4, 2014. (Ex. 1, p. 39) However, rather than return to work on August 18, 2014, claimant proceeded with the right cubital tunnel release that had been recommended by Dr. Han.

On August 19, 2014, Dr. Han, performed a right cubital tunnel release with ulnar transposition. (Ex. 5, p. 1) On September 15, 2014, claimant commenced physical therapy with Kinetic Edge Physical therapy upon a referral by Dr. Han. (Ex. 6, p. 1) At the outset of physical therapy, claimant reported his pain to be 7 out of 10 and described numbness down his arm into his fingers. (Ex. 6, p. 1) At the conclusion of physical therapy, claimant continued to report right elbow pain and numbness down his arm into his fingers, but reported that his pain was 1 out of 10. (Ex. 6, p. 67) Claimant reported that his pain would reach 2-3/10 at its worst, and noted that his pain would increase in colder weather. (Ex. 6, p. 67) Claimant was released to return to work without restrictions on October 22, 2014. (Ex. 4, p. 42) At that time, claimant reported that he was having no pain, and very minimal symptoms. (Ex. 4, p. 40; Tr. p. 32) Then after working for several weeks, on December 3, 2014, claimant was seen again by Dr. Han, and reported "residual numbness and tingling," which was described as "being mild," although it did "occur daily." (Ex. 4, p. 43)

Dr. Han declared claimant to be at maximum medical improvement (MMI) on December 3, 2014. (Ex. 4, p. 46) On January 13, 2015, Dr. Han assigned a 4 percent permanent impairment to claimant's right upper extremity. (Ex. 4, p. 51)

At the end of December, 2014, claimant testified that his arm began aching. (Tr. p. 33) In February, 2015, claimant testified that he reported to the employer that the symptoms were becoming bothersome, and by March, 2015, claimant reported to the employer that the symptoms were worse than they had been before the surgery. (Tr. p. 33) Claimant testified that in March, 2015, he was experiencing pain between his shoulder blades in his spine, his right arm, and numbness in his fingers. (Tr. p. 33-34) Claimant also described pain in the area of his right armpit. (Tr. p. 35) Claimant returned to see Dr. Han for follow-up care on March 27, 2015. It is recorded that claimant described the pain as starting "several weeks ago" and involving "the whole arm" and numbness and tingling in the "small finger and ring finger." (Ex. 4, p. 52) There is no mention in this medical record of upper back/spine pain. On March 27, 2015, Dr. Han assigned a restriction of no use of the right hand. (Ex. 4, p. 55) Claimant had been performing his truck driving job for the defendant since being released to return to work on October 22, 2014, until Dr. Han assigned this restriction. (Tr. p. 72) Claimant was then off work from March 2015, until the date of his termination, about a year later on March 31, 2016. (Tr. p. 72)

On April 2, 2015, Dr. Han returned claimant to physical therapy for a second time. (Ex. 6, p. 70) Claimant reported to the physical therapist that "his arm has never been back to 'normal' since his surgery." (Ex. 6, p. 71) "He has difficulty with even light tasks involving his right arm." (Ex. 6, p. 71) Claimant also reported that his pain and loss of function were "severe" and that he was being awakened from sleep every hour. (Ex. 6, p. 70) Claimant completed five therapy sessions and stated on April 17, 2015, that his pain had slightly improved. (Ex. 6, p. 73) At that time the goals of the therapy were described as either "not met" or "ongoing". (Ex. 6, p. 74)

Claimant testified that he was told by Dr. Han that the ongoing pain that claimant was having was not the doctor's fault and that claimant may want to quit his truck driving job. (Tr. p. 38) This is not recorded in the medical records. Claimant testified that he loved his job and had no desire to quit. (Tr. p. 38)

On April 20, 2015, Dr. Han records for the first time, a reference directly concerning claimant's neck, stating that, "I think that the patient did have a history of cervical spine problems which dated back to 2005 and 2006. I think the patient may need a pain specialist for further evaluation with this condition." (Ex. 4, p. 56, 57)

On May 7, 2015, claimant was seen at Pain Specialists of Iowa by Dr. Richard Bose, Jr. "for evaluation of right arm pain" and "for evaluation of possible cervical spine etiology." (Ex. 7, p. 76-77) Under "Assessments" appears the following statement: "[d]o not believe central neuraxial etiology [C8 radicular] is likely, but rather a peripheral etiology involving original injury at right ulnar nerve." (Ex. 7, p. 76) Dr. Bose suggested proceeding "with the right cervicothoracic sympathetic blockade ['stellate ganglion block'] as a diagnostic protocol to attempt to diagnose or rule out of sympathetically maintained component of neuropathic pain." (Ex. 7, p. 76) Based on a utilization review performed by Shahid Khan, M.D., defendants did not authorize the stellate ganglion block. Dr. Khan concluded that the medical criteria for that procedure had not been met. (Ex. 8; Def. Brief p. 6-7) Claimant testified that he discussed this procedure with Dr. Bose, and understood that a negative side effect of the procedure is that it could cause seizures. (Tr. p. 39) After thinking about it for a few weeks and deciding to move forward, claimant testified that "nobody could find the doctor anywhere, he disappeared." (Tr. p. 40) Claimant did not go forward with the procedure. (Tr. p. 40) The undersigned finds that Dr. Bose, despite his apparent disappearance, did opine a C-8 radicular etiology was not likely, rather the complaints were more likely a peripheral etiology from the original injury at the right ulnar nerve. (Ex. 7, p. 76)

On September 30, 2015, claimant was seen by Christian Ledet, M.D., at Central States Medicine. (Ex. 9, p. 1) Dr. Ledet's note indicates claimant's chief complaint as "WC patient here for right arm pain." (Ex. 9, p. 83) Dr. Ledet's evaluation indicated a location of the pain from the right fingers to the right shoulder, but did not include the neck or upper back. (Ex. 9, p. 83-86) Dr. Ledet prescribed different medications throughout his treatment of claimant, which claimant reported as causing negative side effects. (Tr. p. 41; Ex. P, p. 49-51; Ex 9, p. 87, 91, 94, 98 & 102) Dr. Ledet does not appear to have directly treated any neck or upper back condition or complaints.

On January 29, 2016, claimant underwent an FCE recommended by Dr. Ledet, in which claimant is noted to have exhibited "consistent performance/acceptable effort." (Ex. 10, p. 1) Claimant was determined to be able to function at the medium physical demand level. (Ex. 10, p. 1) The medium demand level is noted to include occasional lifting of 21-50 pounds; frequent lifting of 11-25 pounds; and constant lifting of 10 pounds. (Ex. 10, p. 121)

On February 15, 2016, claimant was seen by Dr. Ledet for the last time. (Ex. 9, p. 106) Claimant stated that his pain level on a scale of 1 to 10, was 2 at the least and 4 at the worst. (Ex. 9, p. 106) Dr. Ledet opined that claimant had reached MMI at that time and that claimant was not currently taking medication. (Ex. 9, p. 109) Claimant confirmed that he was not taking any prescription medication for his work injury at the time of the hearing. (Tr. p. 43-44) Dr. Ledet then assigned permanent restrictions as follows:

Lifting [r]estriction two hand 12 inch to waist occasional 50 lbs.
Lifting [r]estriction two hand waist to sholder [sic] occasional 35 lbs.
Pushing [r]estriction [o]ccassional 70 lbs.
Pulling [r]estriction [o]ccassional 70 lbs.
Working above shoulder level frequent 15 lbs.
Unrestricted [d]exterity.

(Ex. 9, p. 110). Dr. Ledet did not provide an opinion on whether any permanent impairment rating was applicable. (Ex. 9, p. 110)

Defendants rely on the 4 percent permanency rating assigned by Dr. Han on January 13, 2015 and confirmed on March 21, 2016. (Ex. 4, p. 51; Ex. K, p. 65)

On March 4, 2016, claimant was seen by Sunil Bansal, M.D., of the Iowa Injury Institute for a one-time visit and independent medical examination. Dr. Bansal reviewed medical records, including those relating to prior right carpal tunnel from 1995 and neck pain from 2006, along with records related to the work injury that is the subject of this claim. (Ex. 11, p. 122-128) Concerning the prior injuries, Dr. Bansal notes that claimant reported "no problems with his right arm or shoulder prior to the work incident of January 14, 2014," and that "[h]e had been able to perform all of his job duties without any difficulty." (Ex. 11, p. 128) The statement concerning claimant having no prior problems with his right arm, is not consistent with Dr. Bansal's review of the records from 1995, in which Dr. Neff performed a right carpal tunnel release and assigned a 5 percent impairment of the right upper extremity. (Ex. 11, p. 123) Obviously, Dr. Bansal was aware of the prior carpal tunnel injury and impairment rating. The same is clearly included within Dr. Bansal's report. Therefore, the above statement concerning no previous problems with his right arm or shoulder is understood by the undersigned to be a conclusion that the prior carpal tunnel injury did not involve the elbow or cubital tunnel, which is involved in this case. Also, the carpal tunnel surgery was approximately 19 years prior to the alleged work injury herein and claimant was able to carry out his work

duties for the defendant employer without any problems prior to the present injury. Claimant testified that he healed from the right carpal tunnel surgery with no residual symptoms or ongoing problems. (Tr. p. 64)

Concerning MMI, Dr. Bansal agreed with Dr. Ledet that the date of MMI regarding the right elbow is February 15, 2016. (Ex. 11, p. 132) However, concerning claimant's neck, he did not offer an opinion regarding any particular date of MMI, but rather he recommended an MRI "with recommendations based on results." (Ex. 11, p. 132) Nevertheless, Dr. Bansal assigned a 5 percent whole person impairment rating for the neck condition, while stating that "it is premature to assign a rating for the cervical neck as adequate diagnostics have not been performed." (Ex. 11, p. 134)

Dr. Bansal also agreed with the conclusions of the FCE "regarding returning to work" which are "consistent with the US Department of Labor's physical demand level of medium work." (Ex. 11, p. 135) However, Dr. Bansal without additional discussion appears to contradict that conclusion by adding that claimant should have additional permanent restrictions of "no lifting greater than 10 pounds occasionally, 5 pounds frequently with the right arm." (Ex. 11, p. 135) These additional restrictions would move claimant to a sedentary work level, rather than medium. (Ex. 10, p. 121)

Claimant testified that the current symptoms that he associates with the work injury include a burning sensation, numbness and pain in the right arm, and pain under his right armpit such that his sleep is disturbed, and a stabbing pain between his shoulder blades. (Tr. p. 47-48) Claimant stated that the pain is made worse when he sleeps on his right arm and from the cold weather and is relieved by massaging his arm. (Tr. p. 48-49) Claimant also stated that his right hand swells. (Tr. p. 49-50)

When claimant was evaluated by Dr. Bansal, he advised Dr. Bansal his fourth and fifth fingers were "constantly completely numb," and that the same was "becoming evident in the rest of his fingers." (Ex. 11, p. 129) Claimant also reported a burning sensation in his hand and a swollen lump in his forearm and constant pain in his right arm, which he rated at between 2 and 4 on a scale of 1 to 10. (Ex. 11, p. 129) Dr. Bansal found that claimant had tenderness to palpation of the medial epicondylar region, positive Tinel's sign at the elbow, and weakness with fifth digit adduction/abduction. (Ex. 11, p. 130) Dr. Bansal also found a loss of sensory discrimination of the long finger, fourth and fifth fingers. (Ex. 11, p. 131) Dr. Bansal assigned 6 percent impairment for the right upper extremity. (Ex. 11, p. 134) In assigning this rating, Dr. Bansal relied on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition: Tables 16-10, 16-11 and 16-15. (Ex. 11, p. 134)

As stated above, Dr. Han assigned 4 percent impairment to the claimant's right upper extremity on January 13, 2015, in a letter to the insurance carrier. (Ex. 4, p. 51) In Dr. Han's letter he referred to tables 16-10 and 16-15 of the AMA Guides, without any further discussion. (Ex. 4, p. 51) He was then provided with a letter on March 18, 2016, prepared by defense counsel, which sought to confirm that his opinion concerning permanent impairment had not changed. (Ex. K, p. 64) On March 21, 2016, Dr. Han

signed the letter indicating his agreement, opining that claimant's impairment rating had not changed and remained 4 percent to the right upper extremity. (Ex. K, p. 65) Dr. Han did not evaluate claimant at that time and had not seen claimant since April 20, 2015. (Ex. K, p. 64; Ex. 4, p. 56) After April 20, 2015, claimant had undergone additional treatment with Dr. Bose, Dr. Ledet, Accelerated Rehabilitation and an IME with Dr. Bansal, as described above. The March 18th letter simply states that Dr. Han is "aware" of claimant's subsequent treatment, but does not indicate whether Dr. Han reviewed any records related thereto. (Ex. K, p. 64)

As stated above, Dr. Ledet did not provide an opinion regarding percentage of permanent impairment regarding either the right upper extremity or neck.

Considering the extent of permanent impairment affecting claimant's right upper extremity, I find Dr. Bansal's opinion most convincing. Dr. Bansal's report includes the portions of the AMA Guides that he relied upon, along with his recorded observations from his exam that support his opinion of 6 percent impairment. Further, Dr. Bansal's evaluation was the most recent exam and his report includes a review of relevant medical records. Dr. Han's agreement to the March 18, 2016 letter prepared by defense counsel does not indicate that he reviewed any subsequent treatment records, only that he was generally aware of subsequent treatment, and he had not seen the claimant for nearly 11 months. Based on Dr. Bansal's report, I find that claimant sustained a 6 percent permanent impairment to his right upper extremity as a result of the January 14, 2014 work injury.

Regarding causation of the neck claim, Dr. Bansal initially states: "[i]n my medical opinion, Mr. Beltz's constellation of right shoulder, neck, and shoulder blade pain is related to a cervical discogenic problem." (Ex. 11, p. 133) Dr. Bansal then later states: "the mechanism of injury of falling is consistent an aggravated cervical discogenic pathology." (Ex. 11, p. 133) However, this statement is immediately followed by a qualifying statement that: "[u]nfortunately, he has not had an MRI to further define any discogenic pathology," (Ex. 11, p. 133) and he later states that an MRI is recommended and that "[i]f there is pathology to these levels, I would opine that pathology is related to the work related fall on January 14, 2014. If there is no pathology to those levels, I would not opine on work relatedness for a cervical spine component." (Ex. 11, p. 133-134) Therefore, although claimant argues that Dr. Bansal has provided an opinion that the neck injury is work related, Dr. Bansal's opinion at this time is more correctly stated that he believes there is a cervical discogenic connection to his symptoms, and a fall is consistent with an aggravation of that problem, but without an MRI, he is unable to opine whether the fall of January 14, 2014, caused such an aggravation, and is therefore, unable to conclude at this time whether the neck is causally related to the work injury.

Dr. Han has concluded that "if Mr. Beltz has any current cervical/neck complaints or problems, they were not caused or aggravated by the 1/22/14 work incident." (Ex. K, p. 65) Dr. Bose has stated that he does "not believe central neuraxial etiology [C8 radicular] is likely, but rather a peripheral etiology involving original injury at right ulnar

nerve," is the cause of claimant's complaints. (Ex. 7, p. 76) Dr. Ledet did not offer an opinion on causation related to the neck claim.

In review of the available medical opinions concerning causation of the neck claim, Dr. Ledet has not offered an opinion on the matter, Dr. Han has affirmatively denied causation and Dr. Bose has said causation concerning the neck is unlikely. Finally, Dr. Bansal, claimant's IME physician, has said that although the fall is consistent with aggravation of a neck condition, without an MRI, he cannot offer a final causation opinion. Therefore, from the evidence available to the undersigned, at this time, I find that the claimant has failed to carry his burden of proof that he sustained an injury to his neck that arose out of and in the course of his employment on January 14, 2014.

As a result of finding that claimant has failed to establish causation concerning the neck injury, the remaining issues concerning the neck claim are moot.

The parties have stipulated to an applicable rate of \$591.96. (Hearing Report)

CONCLUSIONS OF LAW

The initial disputed issue is whether claimant sustained an injury to his neck that arose out of and in the course of his employment with B&B Bedding on January 14, 2014.

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).

Reviewing the medical opinions discussed in greater detail above, I found that Dr. Ledet offered no opinion on the issue of causation of the neck claim, Dr. Han has affirmatively denied causation and Dr. Bose has said causation concerning the neck is unlikely. Finally, Dr. Bansal, has said that although a fall is consistent with the neck claim, MRI testing is needed to provide a final causation opinion. There is also the complicating factor that claimant's neck pain did not appear in the records until his visit with the chiropractor on May 6, 2014, wherein he describes neck and right arm pain that started after an incident clearly separate and distinct from the mechanism of injury described in the present case. (Ex. G, p. 30) Therefore, the undersigned must conclude that the claimant has failed to carry his burden of proof that he sustained an injury to his neck that arose out of and in the course of his employment on January 14, 2014.

Having determined that the neck claim is not causally related to the January 14, 2014, work injury, the issues of temporary total disability/healing period (TTD/HP) and permanent partial disability (PPD) are moot.

Concerning the claimant's request for alternate medical care, before alternate medical care can be ordered, compensability of the condition to be treated must be established, either by admission of liability or adjudication. Defendants have denied liability concerning the neck and I have found that claimant has failed to carry his burden of proof regarding the same. Therefore, claimant's request for alternate care concerning the neck is denied.

Because this claim involves an arm claim in addition to the neck claim, there remains the issue of PPD related to the arm injury.

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

As described above and for the reasons there stated, I have found Dr. Bansal's opinion concerning permanent partial disability of the right upper extremity to be more persuasive than the opinion of Dr. Han. Further, the testimony provided by claimant concerning his ongoing symptoms corroborate the observations, findings and

conclusions of Dr. Bansal. I conclude that claimant has sustained a 6 percent permanent partial impairment to the right arm, which is 15 weeks. However, the parties have stipulated that the defendants have paid 16.429 weeks of PPD compensation. (Hearing Report). Therefore, claimant is owed no additional PPD benefits.

Because I have determined that claimant has failed to carry his burden of proof that the neck injury is related to the January 14, 2014, work injury and that claimant is not owed any additional PPD benefits concerning the arm injury, the apportionment argument put forward by defendant, is moot.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Claimant has not prevailed on the primary disputed issues in this case. I decline to award claimant any additional costs in this case.

ORDER

THEREFORE, IT IS ORDERED:

1. That claimant shall take no additional benefits.
2. Each party shall pay their own costs.
3. That defendants shall file subsequent reports of injury (SROI) as required by our administrative rule 876 IAC 3.1(2).

Signed and filed this 1st day of June, 2016.



TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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TJG/kjw

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.