

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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CHOL ABIET,

Claimant,

vs.

SMITHFIELD FOODS, INC.,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.,

Insurance Carrier,  
Defendants.

File No. 20008808.01

ARBITRATION DECISION

Head Note Nos.: 1803, 1803.1, 2907

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STATEMENT OF THE CASE

Claimant, Chol Abiet, has filed a petition in arbitration seeking workers' compensation benefits against Smithfield Foods, Inc., employer, and Safety National Casualty Corp, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on May 16, 2022, via Zoom, and considered fully submitted upon the simultaneous filing of briefs on June 20, 2022, the agreed upon date for the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-7, Claimant's Exhibits 1-9, Defendants Exhibits A-K, and the testimony of the claimant, Heather Adams, and Pedro Mena.

ISSUES

1. Whether claimant has sustained a permanent disability, and if so,
2. Whether the permanent disability is a scheduled member injury or industrial in nature;
3. The application of Iowa Code section 85.34(2)(v);
4. Assessment of costs.

### STIPULATIONS

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.

The parties stipulate claimant sustained an injury on December 14, 2019, arising out of and in the course of his employment. They further agree that the injury was the cause of a temporary disability to which is no longer in dispute.

The parties agree the commencement date for permanent partial disability benefits is July 23, 2020.

At the time of the injury claimant's gross earnings were \$981.40 per week and that claimant was married and entitled to two exemptions. Based on the foregoing, the parties believe the weekly benefit rate to be \$623.35.

Defendants waive all affirmative defenses. There are no medical benefits in dispute.

### FINDINGS OF FACT

Claimant was a 59-year-old person at the time of the hearing. Claimant was born in Sudan and immigrated to the United States in 2001. He had three years of college in Sudan and prior to immigrating was employed as a teacher. Currently, claimant has limited English skills and used an interpreter during the hearing. He has the ability to understand some English but cannot read or write the language.

Prior to 2014 and his employment with defendant employer, claimant had no problems or injuries related to his back. He was required to undergo a physical at the time of his employment which he passed without limitation.

In January 2015, claimant slipped on a piece of fat at work and fell. (JE 1:1) He struck his lower back and left elbow on the floor and experienced tenderness while bending forward and on the left side while twisting at the waist. (Id.) He reported pain in his low back, elbow, right rib cage. (JE C2) After receiving ice and ibuprofen at the in-house nurses' station, he was released from care on February 14, 2015, following a no show for subsequent treatment. He continued to work without restrictions.

In March 2017, claimant mentioned back pain radiating into his left leg during an appointment related to his diabetes. (JE 2:15) He was given a prescription and his symptoms appear to have resolved as they were not mentioned during a subsequent appointment on June 24, 2017. (JE 2:21)

In June 2017, he was struck in the chest by the wizard knife and complained of left-sided chest pain and rib pain. (JE 1:2) From time to time he would obtain relief for low back pain and left leg pain from the nurses' station. (JE 1:3-5; 12: 15-20)<sup>1</sup> On August 9, 2018, claimant underwent an independent medical evaluation with Douglas W. Martin, M.D. (DE D:14) Dr. Martin noted that the purpose for the IME was a left-sided rib cage injury. (DE D:15) However, during the history portion, claimant related that he was having difficulties with left shoulder pain, lower back discomfort, and left knee pain from a fall injury in 2014. (Id.) Dr. Martin did not have prior medical records to document this. (Id.) Claimant stated that he had problems with limited range of motion in the shoulder that kept him up at night. (Id.) He complained of radiating discomfort in the elbow, discomfort in the muscular left superior buttock and low back without any radicular symptoms, substantial medial joint line pain and instability in the left knee. (Id.) He had difficulties at night, trying to find a comfortable position. (Id.)

During examination, claimant had medial joint line tenderness upon palpation with mild effusion. (DE D:16) He had markedly positive McMurray's test with an audible click in the medial aspect of the knee along with end extension difficulties. (Id.) Stress tests of the MCL and LCL did not show any instability. (Id.) His range of motion was normal. (Id.) Examination of his lower back revealed tenderness along the superior gluteal musculature on the left side. Light touch and two-point discrimination was normal. Strength and reflexes were normal. (Id.)

He had positive Neer and Hawkin's impingement tests with limited range of motion in the left shoulder. (DE D:17) He had a markedly positive empty pop can maneuver but negative drop arm maneuver. (Id.) He had some reduced left shoulder lateral abduction and flexion strength. (Id.) Dr. Martin's assessment was likely left rotator cuff tendinitis/impingement syndrome with a possible rotator cuff tear, mechanical left-sided lower back discomfort and left knee medial meniscus injury. (DE D:17) Dr. Martin recommended an MRI of the knee and left shoulder. (Id.) Dr. Martin believed that the physical complaints of claimant related to the 2014 fall and not the 2017 knife incident.

Claimant testified at hearing that the left-sided back pain would wax and wane since 2014. (Trans 21-24) However, he said that in the past his pain was controllable and now it is not. (Trans. 57)

Claimant has continuously worked the loin department from the beginning of his employment to December 2019. Claimant described this as repetitive work. The loins travel down a conveyor belt moving from claimant's right to left. He is required to grab and hold each loin, cut the bone, trim off excess fat, and push the loin down the belt.

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<sup>1</sup> Claimant is a somewhat non-compliant patient. Often no showed for appointments for follow up with Smithfield. (E.g JE 1) He did not bring his book along for review at the diabetes checkup. (JE 2:22) Did not check blood sugars when he felt like his heart was pounding. (JE2:28) Doctor not convinced claimant was taking his medications. (JE 2:30) She expressed concerns about compliance. (JE 2:32) He stopped taking his meds for an unknown period of time in October 2021. (JE 2:62) He missed a couple of months of visits with Dr. Harbach in 2020. (JE 4:94)

This work required constant twisting of the torso and back. He processed approximately 1000 pieces of meat in a single day.

On or about December 14, 2019, claimant was in the process of stepping down from a platform to go on a break when he slipped and fell backwards. He landed on concrete, injuring his lower back on the left side. (JE 1:6) In the incident report, it was noted that he struck his hip first then his hand, but at hearing he said that he hit the back of his head, shoulder, arm, hand, back, hips and knee. (Trans. 27) At the nurses' station he had tenderness to the heel of the hand and to the left hip and buttock area. (DE C3:11) In the pain diagram, claimant marked his shoulder and left low back above the buttock as areas of discomfort. (DE C3:13) He marked his pain as 9 on a 10 scale. (Id.) Shortly after, he developed radiating pain down his left leg. (JE 2:36)

On December 16, 2019, claimant was seen by Todd Woollen, M.D., a company physician, who assessed claimant with lumbar back pain with radiculopathy. (JE 2:36-37) X-rays of the left shoulder showed no fractures and the lumbar spine showed normal degenerative facet changes. (JE 3:66-67) Dr. Woollen prescribed physical therapy and work restrictions of no weight bearing on the left leg and no standing more than two hours a day. (JE 2:37) Claimant was also provided crutches for ambulation. (JE 2:37)

Claimant was then sent to Todd Harbach, M.D., for further evaluation. (JE 4:72-77) In the subjective portion, claimant reported low back pain at a 9 out of 10 on a 10 scale, radiating below the left knee. The symptoms were aggravated by walking and relieved by lying down. Dr. Harbach observed claimant to walk with an antalgic gait<sup>2</sup> using crutches. (JE 4:73) Claimant had mild to moderate tenderness during palpation in the lumbar region and diffuse tenderness in the left knee. (JE 4:73) Dr. Harbach ordered physical therapy (PT), prescribed diclofenac and hydrocodone and placed claimant off work. (JE 4:74)

Claimant started PT on December 23, 2019. (JE 5:112-114) The plan was to treat claimant with electrical stimulation, manual therapy, therapeutic exercises, and neuromuscular re-education. (JE 5:114) Claimant's list of problems included back pain at 8 on a 10 scale, bilateral hip pain at 8 on a 10 scale, left knee pain at 7 on a 10 scale, left forearm pain at 5 on a 10 scale, and head pain at 8 on a 10 scale. (JE 5:112) His lumbar range of motion was within normal limits but his left knee extension and hip flexion was reduced. (JE5:113)

Claimant was to be seen three times a week for a total of eighteen visits. (Id.) From December 23, 2019, through January 31, 2019, claimant attended eight appointments, cancelled three times, and no showed once. (JE 5:115) On January 10, 2020, the therapist noted that she had watched video footage of claimant walking in the plant parking lot demonstrating normal gait speed and normal gait cycle mechanics. (JE

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<sup>2</sup> In the Physical exam section, Dr. Harbach detailed claimant as having a normal gait, but below the list, claimant was noted to have antalgic gait. (JE 4:73)

5:124) This reinforced the therapist's suspicion of symptom magnification. (Id.) The therapy notes that claimant needed constant verbal cues to move to the next exercise and could not articulate his home exercise plan. (See JE 5 generally)

On December 30, 2019, claimant returned to Dr. Harbach with continued reports of low back pain, radiating to the left thigh with some improvement in the hip and low back. (JE 4:78) Claimant was able to walk without crutches but reported that walking and activity increased claimant's pain. (Id.) Dr. Harbach noted that, "I just think he bruised himself really badly." (JE 4:79) Claimant was moving fluidly around the room although he appeared to want to use his crutches. (Id.) Dr. Harbach returned claimant to work with restrictions of no lifting more than 10 pounds, no prolonged standing, and instructions that claimant should wean himself off the use of crutches. (JE 4:79)

Claimant's pain did lessen over time. On January 20, 2020, claimant's pain was 4 on a ten scale. His left knee was better but his right knee hurt. (JE 5:128)

On January 24, 2020, claimant was seen at Crawford County Memorial Hospital by ARNP Julie Graeve for abdominal pain. (JE 2:38) During this visit, he reported pain through the lumbosacral spine upon palpation. SLRs were negative but forward flexion and lateral bending produced discomfort. (JE 2:40) His gait was steady and even. Meloxicam prescriptions was refilled and he was ordered to return to the clinic if his symptoms did not improve. (JE 2:41; 46)

On January 27, 2020, claimant reported to Dr. Harbach that he had some improvement with his hip and low back pain. (JE 4:81) He was able to walk without the assistance of crutches and no longer having pain doing daily duties. (Id.) He had some ongoing left arm numbness and a continued headache from falling and bumping his head. (Id.) Claimant had been performing sedentary work only but continued to have pain and an antalgic gait. (JE 4) Claimant requested two more weeks of light duty work and Dr. Harbach complied with this request, deeming it reasonable. (JE 4:82) He continued claimant on the NSAIDs. (JE 4:82)

On January 31, 2020, during therapy, claimant reported pain at 6 on a 10 scale with pain in the right knee and left hip. (JE 5:132) On February 5, 2020, claimant's pain was 6 on a 10 scale with pain in the back, left hip, neck, left shoulder, and left elbow pain. (JE 5:138)

In February, claimant was returned to regular duty work which resulted in increased pain. Claimant returned to Dr. Harbach on March 19, 2020 with low back pain radiating into the left leg. (JE 4:86) The pain was 8/10. He had an antalgic gait. (JE 4:87) On examination, he had active painful range of motion in the lumbar region with mild to moderate tenderness during palpation. (JE 4:87) Dr. Harbach ordered an MRI and placed claimant on new restrictions of no lifting over 10 pounds, no repetitive lifting, pushing, pulling, bending or twisting. (JE 4:88)

The MRI, dated April 7, 2020, showed a disc bulge and/or osteophyte formation at L4-5 and L5-S1. (JE 3:68) At L5-S1, there was a small superimposed right paracentral disc protrusion, in combination with posterior element degenerative changes there is lateral recess narrowing with mild neural foraminal stenosis with degenerative changes in the remainder of the spine. (JE 3:68-69)

On April 9, 2020, claimant returned to Dr. Harbach for a discussion of the MRI results. (JE 4:89) Claimant wanted to restart the Dr. Harbach recommended renewal of PT and refill of the NSAIDs previously prescribed. (JE 4) Dr. Harbach also mentioned that he was authorized to care for claimant's left shoulder and neck. (JE 4) Claimant was continued on the 10-pound weight restriction. (JE 4:89-91) Claimant restarted therapy on April 17, 2020. (JE 5:144)

During his April 17, 2020, physical therapy appointment, claimant had considerable left hip pain with palpation to the gluteal med and min area with piriformis along with substantial left hip weakness consistent with gluteal tendinopathy. (JE 5:145) At the April 20, 2020, physical therapy visit, claimant expressed pain of 9 on a 10 scale and reported that the exercises were unhelpful. He stated, "the exercises don't make it any better because the bone is broken." (JE 5:147) On April 24, 2020, claimant reported that his left knee was feeling good but the right knee was not. (JE 5:151)

On April 29, 2020, the therapist counseled the claimant that the radiographs showed only degeneration but no fracture. (JE 5:156) However, claimant was still very tender to palpation throughout the gluteal muscles and left hip area with substantial hip weakness. (Id.) Because of the pain, claimant was not able to tolerate advanced core exercises. (Id.)

On May 1, 2020, claimant's progress during physical therapy was marked as fair. (JE 5:159) His pain complaints were still at high levels but his function did not match his pain complaints as he was able to walk with a reciprocal gait. (Id.) The therapist noted some pain behaviors with supine to and from sit on treatment table. (Id.) The therapist went on to write, "Will try to progress, but pain in left shoulder and elbow, pain in left hip, pain in right knee limiting to his activity tolerance." (JE 5:159)

At the May 6, 2020, visit, claimant's pain complaints were 9 on a 10 scale with pain in the left wrist, elbow, shoulder and right knee with pain in the left hip, back, and shoulder being the worst. (JE 5:162) The therapist noted that claimant's reported pain level was high but his transitional movements when he moved from supine to sitting were better than one would execute with the reported pain levels. (JE 5:163) Additionally, claimant's height and low muscle mass likely influenced "over-use type injuries." (Id.)

On June 8, 2020, the physical therapist noted claimant had attended all visits and while claimant's function had improved, his pain had not. (JE 5:170-171) Claimant had pain with palpation to his left hip and back region. (Id.)

Claimant was seen by Dr. Harbach on June 25, 2020, for continued left upper extremity pain, pain in the neck, low back, left shoulder, left elbow, and left knee. (JE 4:92) X-rays showed mild to moderate bilateral facet joint arthrosis at the cervical spine along with loss of the normal cervical lordosis with collapse and anterior spurring at C4-C5 and C5-C6. (JE 4:93) There was minimal acromioclavicular joint arthrosis and type II acromion. (JE 4:93) Minimal spurring at the superior and inferior poles of the patella bilaterally. (JE 4:93) Dr. Harbach diagnosed claimant with left hip pain, left leg paresthesias, low back pain at multiple sites, bulging lumbar disk, left upper extremity pain, cervicalgia and opined that at worst claimant sustained a temporary aggravation of a pre-existing condition. (JE 4:94) Dr. Harbach believed claimant should have a FCE or attempt to return to work. (4:94) If he was unable to return to work, he "would have to apply for disability." (4:94) Dr. Harbach maintained claimant's work restrictions.

The FCE took place with Neal Waccholtz, PT, DPT, on July 9, 2020. (JE 6:172) Therapist Waccholtz deemed the study invalid based on invalid or inconsistent performance. (JE 6:172-177) Claimant demonstrated poor effort during manual muscle testing, grip strength testing and lifting assessment. (JE 6:172) He self-limited his spinal mobility and extremity mobility during specific testing with improved mobility during distraction. (Id.) His pain levels did not correlate with objective findings of dysfunction. (Id.)

After the FCE, claimant saw Dr. Harbach on July 23, 2020. (JE 4:96) Dr. Harbach wrote, "He failed as 5/7 of the validity criteria and I am obligated to release him without restrictions and put him at maximal medical improvement (MMI) today." (JE 4:97) At the time, claimant maintained he had pain in his neck, left shoulder, left wrist, left elbow, low back, hips and legs. (JE 4:97) He was released and instructed to follow up as needed. (Id.)

Claimant testified that when he returned to work he was not able to maintain the pace required by the Trim Loins job. He placed the blame on the low back pain he had that was exacerbated by the repetitive twisting. Claimant was disqualified from this job by his supervisor, Pedro Mena, in January 2021. Mr. Mena admitted that claimant had been able to keep up with the pace of the job prior to the December 14, 2019, fall.

On August 17, 2020, claimant was seen by his primary care physician, Michael Luft, D.O., who documented claimant's complaints of low back pain, left hip pain, and radiating left leg pain. (JE 7:178-80) Dr. Luft's examination results found that claimant had pain with internal rotation of the left hip, difficulty flexing the left hip, some tenderness to palpation at the occiput. (JE 7:179) Dr. Luft diagnosed claimant with low back pain and started claimant on Celebrex. (Id.)

On September 17, 2020, claimant went through an evaluation with Timothy Vinyard, M.D., for his left shoulder. (JE 4:101) Claimant also reported pain in the left wrist, elbow, knee, neck, head and back. (JE 4:101) During the examination, there was tenderness to palpation on the left shoulder, active and pain free range of motion in the neck, normal and active range of motion in the right shoulder but painful active and

passive range of motion. (JE 4:102) Dr. Vinyard wrote, "I do not have an orthopedic explanation for his multiple joint pain. I recommend he see his primary care physician to rule out any systemic problem." (JE 4:102)

On October 1, 2020, Dr. Harbach issued an opinion letter regarding claimant's condition and the treatment Dr. Harbach provided. (JE 4:108) He wrote that claimant suffered from degenerative changes in his lumbar regions, that claimant was not good at following up with physical therapy and not compliant with medication therapy. (Id.) Dr. Harbach affirmed claimant's MMI date was July 23, 2020, and that claimant suffered a temporary injury of his joints and a temporary aggravation of a pre-existing degenerative condition in his lumbar spine. (JE 4:109) Claimant returned to baseline by July 2020, and that claimant had suffered pain in all those joints since 2014. (Id.) "Not once on exam did he have any of the joints swollen or warm or with an effusion and his neurologic exam was always completely normal and range of motions were all full." (JE 4:109) Dr. Harbach went on to conclude,

For purely administrative purposes, if I was going to give him a rating for his spine, it would be from Table 15-3, it would be DRE Lumbar Category I, which would give him 0% permanent partial impairment of the whole person. That is on page 384 of the book. Because he has full range of motion of all of his other joints and they were temporary injuries, they do not qualify for a rating and the rating would still be zero because the range of motion is full.

(JE 4:109)

On October 15, 2020, Dr. Vinyard wrote a letter to the defendants opining that he had no orthopedic explanation for claimant's pain and that his condition did not qualify for an impairment rating. (JE 4:11)

On October 21, 2020, claimant returned to ARNP Julie Graeve for concerns regarding his scratchy throat. (JE 2:43) He continued to report ongoing chronic low back pain but his Celebrex prescription had helped. (JE 2:46) The Celebrex prescription was refilled and he was instructed to use ice or heat, as well as gentle stretching. (JE 2:46)

On January 16, 2021, Sunil Bansal, M.D., performed an IME of the claimant. (CE 1) In the report, Dr. Bansal documented that claimant had a slip and fall at work in 2014 where claimant injured his shoulder, back, and left knee and had some ongoing pain in those areas. (CE 1:8) Dr. Bansal also wrote that "[f]or the back he denies having leg pain prior to the December 14, 2019, fall. (Id.) Dr. Bansal's account of the actual incident was inaccurate as he described claimant as being rendered unconscious and taken to the emergency room by ambulance. (CE 1:7)

Claimant's current condition as of January 16, 2021, included intermittent headaches, what felt like a fracture of the left shoulder, inability to raise his left arm overhead and difficulty reaching behind his back. (CE 1:8) Claimant had constant left

knee pain, worsening low back pain, and frequent back spasms. (Id.) Claimant reported numbness in his left foot. (Id.)

The inability to raise the arm overhead along with frequent back spasms and numbness in the left foot were symptoms not previously identified in other medical reports.

On examination, claimant exhibited tenderness to palpation over the lower lumbar back facets with guarding. (CE 1:9) He had negative Fabre's tests, negative straight leg raise tests, reduced range of motion in all planes. (Id.) There was a loss of sensory discrimination over the anterolateral thigh. (CE 1:10) His shoulder was tender to palpation and he had reduced range of motion in the shoulder with a positive impingement test on the left. (Id.)

Dr. Bansal diagnosed claimant as sustaining aggravation of lumbar spondylosis and facet arthropathy of the back and sprain of the left shoulder as a result of the fall of December 14, 2019. (CE 1:11) He agreed that claimant's MMI date was July 23, 2020. (Id.) Dr. Bansal opined that the mechanism of falling coupled with the immediate clinical presentation was consistent with the aggravation of the lumbar facet arthroplasty. (Id.) He further wrote,

Of note is that Mr. Abiet had prior low back stemming from a fall in 2014. He reports that he did not have pain radiating down his legs after that fall. This is the same statement is noted in the IME report by Dr. Martin from August 2018. Since the December 2019 fall, he has consistently reported left leg radicular symptoms, further supporting than an aggravation to his lumbar spine occurred from this fall.

(CE 1:11, 12)

Dr. Bansal was aware of the report of Dr. Martin from August 2018 but did not appear to consider the ramifications of the August 2018 report in any of Dr. Bansal's opinions except that the claimant reported no radicular symptoms arising out of the 2014 fall other than the loss of sensory discrimination which had no previous documentation in the medical records. Rather claimant had negative straight leg raise tests consistent with his presentation to Dr. Luft in July 2020. (See JE 7:179)

For the left shoulder, Dr. Bansal did not believe that there was enough medical information to determine the etiologic relationship to the December 14, 2019, injury. (CE 1: 12) Dr. Bansal assigned a 5 percent whole person impairment and recommended restrictions of no lifting greater than 25 pounds, rare bending and twisting and no prolonged sitting greater than an hour at a time. (Id.)

Dr. Bansal did not appear to give consideration to claimant's prior left knee complaints. While claimant did not report radicular symptoms in the 2018 visit with Dr. Martin, he reported substantial medial joint line pain in the left knee, as well as

instability. Claimant mentioned back pain radiating into the left leg during an appointment related to his diabetes in 2017. He reported low back pain and left leg pain to the nurses' station at work in the years preceding 2019. There were no tests that Dr. Bansal performed that reproduced radiculopathy other than the sensory discrimination loss which appears to be the symptom upon which Dr. Bansal relies to arrive at his causal conclusion.

Based on the inconsistency of symptoms documented in Dr. Bansal's report as opposed to claimant's previous medical presentation, lack of consideration provided to Dr. Martin's report of 2018, the dismissal or ignoring of the previous complaints of radicular pain, the lack of reproducible radiculopathy symptoms, the inaccurate account of how severe the incident was Dr. Bansal's opinion is given lower weight.

On March 10, 2021, claimant returned to ARNP Julie Graeve for follow up after his recent hospitalization. (JE 2:47) The medical note states, "[l]ast Friday 3/5/21, he complained to his supervisor that he was having symptoms of back, upper thighs, left elbow and head hurt. He suffered a fall in Dec 2019 at work." (JE 2:47) Claimant felt that he could not stand properly and complained of paresthesia in the left shoulder and left hip/buttock upon waking up in the morning. (Id.) During the examination, he had pain with palpation through the lumbosacral spine. (JE 2:50) His range of motion throughout the upper and lower extremities was deemed adequate. (Id.) He was advised to return to the plant nurse. (JE 2:47)

After being disqualified from the Trim Loins position, defendant employer moved claimant to a Miscellaneous job until April 2022. Claimant testified that the position required twisting and bending as he passed and pushed meat through a machine to cut the ribs.

Claimant was disqualified from this job after he delivered the report of Dr. Bansal to his employer. Claimant was then moved to a job cutting meat which did not require that he bend or twist. He can physically tolerate this job and is in the process of attempting to qualify for it.

At the time of his injury, claimant was making \$19.40 per hour. (Ex. K, 16) After being released by Dr. Harbach in July 2020, claimant's earnings varied from \$18.70 per hour (Ex. 7:85-89) and up to \$20.10 per hour (Ex. 7:86)

#### 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 R. App. P. 6.904(3).

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

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

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

A personal injury contemplated by the workers’ compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke’s Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An

occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Claimant relies on the opinions of Dr. Bansal to establish the claim for permanency. Dr. Bansal's opinion was that claimant's subjective report of radiculopathy was a sign that his previous back condition had been aggravated by the 2019 fall, however, for reasons discussed above Dr. Bansal's opinion is given low weight.

Claimant has had consistent reports of pain throughout his body and primarily on his left side from December 2019 through his medical visits into 2021. However, those complaints have varied in terms of intensity of pain and location of pain. For instance, when he first reported the injuries arising from the December 2019 fall, he identified lumbar pain, left hip pain, buttock pain, and radiating pain in the left leg. During his initial visit with Dr. Harbach, claimant reported low back pain at 9 on a 10 scale with left-sided radicular pains. During physical therapy, he began to report right knee pain.

These inconsistencies, particularly as it relates to the location of pain, is more suggestive of wide ranging degenerative issues rather than work-related injuries. Further, the pre-2019 injuries were in the same general areas and concerned the same affected body parts of the alleged work injuries.

The August 2018, IME is persuasive on this point. During that IME, claimant related difficulty with his left shoulder, low back, and left knee. He related that pain to the fall in 2014. The August 2018 IME also reveals that claimant had significant prior problems related to his low back, left shoulder and left knee, left leg pain and radiculopathy.

The 2018 IME supports a conclusion that claimant sustained injuries to the left shoulder, low back, left knee, and left leg with radiculopathy that were unresolved leading up to the December 2019 injury. There is a lack of credible expert witness testimony that the December 2019 injury permanently lit up or aggravated the pre-existing condition.

Together, these things weigh in the balance against claimant. Claimant did not provide substantial evidence that he sustained more than a temporary aggravation of a pre-existing condition. Nor was there substantial evidence that the current pain complaints claimant suffers are related to the December 2019 incident rather than a previous fall and/or advancing age.

Based on this finding, the remainder of the issues are moot. The parties shall bear their own costs and split the cost of the hearing transcript.

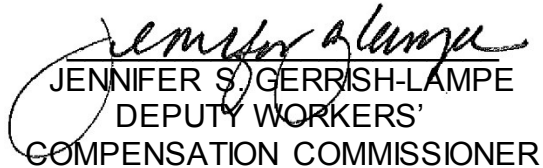
ORDER

THEREFORE IT IS ORDERED:

Claimant shall take nothing.

The parties shall bear their own costs and share the cost of the hearing transcript equally.

Signed and filed this 25<sup>th</sup> day of August, 2022.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Michael Miller (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.