BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALFRED FRANCES COTE, Claimant, vs. FEDERAL MOGUL, Employer, and TRAVELERS, Insurance Carrier, Defendants.	:	File No. 5062632 ARBITRATION DECISION Head Note Nos.: 1402.20, 1402.40, 1803, 2501

STATEMENT OF THE CASE

Alfred Cote, claimant, filed a petition for arbitration against Federal Mogul, as the employer and Travelers, as the insurance carrier. This case came before the undersigned for an arbitration hearing on June 3, 2021.

The parties filed a hearing report and an addendum to that hearing report at the commencement of the hearing. On the hearing report and addendum, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 40 and Defendants' Exhibits A through N. Claimant testified via video deposition in this case. Defendants called Ronald Vorwerk, the employer's human resources manager, to testify at trial. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on July 23, 2021. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the September 25, 2016 work injury caused a neurologic injury resulting in medical treatment and/or permanent disability.

2. Whether the September 25, 2016 work injury caused a cardiovascular injury resulting in medical treatment and/or permanent disability.

3. Whether the September 25, 2016 work injury caused a left shoulder injury resulting in medical treatment and/or permanent disability.

4. The extent of claimant's entitlement to permanent disability, if any.

5. Whether the September 25, 2016 work injury caused medical treatment for a neurologic, cardiovascular, and/or left shoulder injury such that medical expenses should be awarded (subject to a credit for health insurance payments to date).

6. Whether costs should be assessed and, if so, in what amount.

FINDINGS OF FACT

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

Claimant, Alfred Cote, asserts that he sustained injuries as a result of an exposure to hydrogen sulfide on September 25, 2016. (Original Notice and Petition; Claimant's testimony) Claimant asserts he sustained injuries to his pulmonary system, eyes, and cardiac system, as well as a neurological injury, and an injury to his left shoulder as a result of the events of September 25, 2016. (Hearing Report; Claimant's testimony) Defendants admit that an exposure occurred on the alleged date of injury and that it caused injuries to claimant's pulmonary system and his eyes. However, defendants deny that the September 25, 2016 exposure caused cardiac injury, neurologic injury, or a left shoulder injury. (Hearing Report)

Alfred Cote is 63 years of age. He possesses an Associate's Degree in Applied Science in industrial electricity and electronics. Claimant is a licensed master electrician. He has also worked as an emergency medical technician (EMT) and owned an ambulance service in New Hampshire for a period of time. Mr. Cote has operated his own electronics business, which sold equipment for emergency vehicles. He has also owned and operated a gift shop in Illinois and operated his own electrical general contracting business.

In approximately 2000 or 2001, claimant went to work for a commercial plant relocator as a master electrician. He performed hands-on work and was also employed in a supervisory capacity. He testified that he was ultimately second in command for this company, supervising both local and international services performed by this company. Nevertheless, he remained a hands-on worker, performing electrical work throughout this employment.

During his employment with the commercial plant relocator, claimant apparently contracted West Nile Virus. He developed neurologic symptoms and had recurrence of symptoms in following years. However, claimant testified that his West Nile symptoms

eventually resolved. He testified that it has left him with an immunocompromised system and he is more susceptible to other infections or issues.

An extensive description of claimant's West Nile virus exposure and care is contained in a September 12, 2017 arbitration decision written by another deputy commissioner. I can neither improve upon nor change any of those findings. Therefore, I simply adopt those findings, as set forth in Defendants' Exhibit A.

However, I note the prior findings that claimant submitted to a neuropsychological screening at Great River Mental Health Care on January 10, 2003, which demonstrated a cognitive disorder, including deficits in verbal memory and 6th grade skills in arithmetic computation. (Defendants' Ex. A, p. 4) The deputy also noted neurologists documented that claimant had neurological problems after his diagnosis of West Nile syndrome. Once again, however, claimant testified that these symptoms spontaneously resolved prior to the 2016 injury date and testified that he had not experienced West Nile symptoms in quite some time during his video deposition testimony in this case.

When he left employment with the commercial plant relocator, claimant opened and operated an electrical contracting business, which he says went out of business because he could not collect payment for services rendered. He testified that he was owed approximately $300,000.00, but could not afford to hire an attorney to collect the debts.

Accordingly, in 2010, claimant closed his business and started his employment with Federal Mogul. He performed industrial electrical maintenance work for Federal Mogul from 2010 until the date of his injury on September 25, 2016. Mr. Cote testified that he performed machine installations, electrical repairs, installed new lights, changed light bulbs, among other work for Federal Mogul. He testified that his position required physical work on a daily basis prior to his September 2016 injury. Other than believing he returned to work for an hour after this injury date, claimant has not worked since September 25, 2016.

Mr. Cote also filed a prior worker's compensation claim against Federal Mogul, asserting an injury occurred on November 24, 2013. In the prior arbitration proceeding, claimant specifically asserted that he was exposed to hydrogen sulfide, the same chemical he now asserts he was exposed to in 2016.

An arbitration hearing was held for the November 24, 2013 injury date nine days before the current injury occurred. Claimant testified at that hearing and another deputy commissioner entered detailed findings of fact in that case. Once again, I can neither improve upon nor change any of those findings of fact, as that case has been appealed and affirmed. All of the prior findings of fact are final and binding upon me in this case. See Defendants' Ex. A-C.

However, I note that claimant experienced similar symptoms after the 2013 injury as those he asserts he experienced after this 2016 injury. He experienced essential tremors, which affected his hands, head and voice after the 2013 incident. The prior

deputy noted claimant experienced right arm, hand, and finger tremors, confusion, severe headaches, voice hoarseness, burning in both eyes, and right side of the face numbness. (Defendants' Ex. A, p. 24) The prior deputy commissioner received expert opinions on causal connection between claimant's diagnosis of essential tremor and work exposure to hydrogen sulfide. Ultimately, that deputy weighed the opinions of the competing physicians, notably Dr. Dhuna and Dr. Gerr both offered opinions, and accepted the opinions of Dr. Gerr, finding that claimant "failed to prove by a preponderance of the evidence that his condition of essential tremor is causally connected to any exposure he sustained on November 24, 2013." (Defendants' Ex. A, p. 25) That decision was affirmed on appeal by the Iowa Workers' Compensation Commissioner and on judicial review. (Defendants' Ex. B & C)

Mr. Cote has a residence in Navoo, Illinois. However, at the time of hearing, Mr. Cote was incarcerated in a county jail in Illinois. Apparently, claimant was arrested and has been incarcerated since sometime late in 2019. Mr. Cote asserted his Fifth Amendment right against self-incrimination and declined to discuss the pending charges against him during his video testimony in this hearing. He also asserted his Fifth Amendment right against self-incrimination and declined to discuss a prior conviction against him in the State of New Hampshire during his testimony in this case.

However, in a discovery deposition taken in this case, claimant previously asserted the charges in New Hampshire had been "annulled." He reiterated this during his trial testimony in this case. Defendants produced evidence that claimant was convicted in New Hampshire and included a copy of the appeal decision of his criminal case from New Hampshire. It appears claimant was tried before a jury of his peers and convicted of three counts of sexual contact with a minor in New Hampshire. (Defendants' Ex. F & G)

Claimant's discovery deposition testimony on this issue is not credible. Similarly, he did not disclose this on his job application with this employer. (Vorwerk testimony) He testified that he left his job in New Hampshire because of a terrible divorce and because he lost his lodging when the owners of the place he was renting sold the property. Claimant testified at a prior hearing before this agency that he sold his business at that time. Yet, it actually appears that claimant lost his job and business in New Hampshire when he was arrested and subsequently convicted of three charges of sexual contact with a minor. While I might be able to understand why claimant may be embarrassed or was reluctant to admit his criminal history, I find that claimant was not forthcoming about the reason he lost his business in New Hampshire or why he moved to Illinois. These issues are not directly related to the pending claim in Iowa, but claimant's lack of candor on these issues does not generate significant confidence in the remainder of his testimony about his injury or resulting symptoms and difficulties.

Defendants also objected to proceeding with the arbitration hearing because claimant had been determined to be "unfit for trial" in his criminal proceeding in Illinois. Documents related to that finding are not in evidence, though claimant conceded the fact during his testimony. Nevertheless, claimant was capable of and did provide relatively coherent video testimony in this proceeding. He was able to understand and

respond to most questions. He was able to recall many details of his injuries, course of treatment, restrictions, and other relevant information to his worker's compensation claim and prior conditions. Having had the chance to view his video testimony, I find that claimant was capable of testifying in this proceeding.

As noted, the credibility of claimant's testimony is somewhat questionable, however. He asserted that he has mental deficits and lacks memory of certain things since this date of injury. Having viewed claimant's testimony, he appeared capable of understanding and responding to questions and testified for approximately two hours without a break. While I question his credibility on some issues, Mr. Cote certainly did not appear incapable of testifying or participating in the prosecution of this claim. Therefore, I turn to the specific facts of this case and consider Mr. Cote's claims.

On September 25, 2016, Mr. Cote was asked to inspect a malfunctioning fork truck at the employer's place of business, which was emitting an unpleasant odor. Claimant responded to that maintenance request and testified that there was a strong odor coming from the fork truck as he approached it. He lifted the seat of the fork truck to access the battery compartment. Upon doing so, he testified that a white vapor shot up into his face. Claimant immediately felt light headed, believes he passed out, fell forward toward the battery and then onto his left side on the floor.

The next thing Mr. Cote remembers is regaining consciousness while lying on the floor. He testified that he drug himself away from the fork truck and was able to stand. He immediately reported the incident. A supervisor, Brittany Ward, went back to the fork truck with claimant to inspect the situation. She testified via deposition that she felt tingling in her legs when approaching the fork truck.

Claimant is not aware of any witnesses to his September 25, 2016 incident. Ronald Vorwerk testified on behalf of the employer and indicated that there were no witnesses to claimant's incident in September 2016. However, Mr. Vorwerk acknowledged that several witnesses, via deposition, acknowledged a smell of rotten eggs prior to the incident of September 25, 2016. Defendants admit that some exposure and injury occurred.

Mr. Vorwerk testified about observing claimant's tremors prior to the 2016 incident. However, he also acknowledged that claimant performed all of his required job duties prior to the September 25, 2016 incident and that he was not aware of any physician imposed work restrictions on claimant prior to the 2016 date of injury.

Mr. Cote ultimately finished his shift on the date of injury, but did not perform physical work after the exposure. The employer did not send him for medical care and no detoxification efforts were undertaken on the date of injury. Instead, at the end of his shift, claimant attended a class at a local community college for his work. He remained at the class for an additional eight hours before going home to bed.

Unfortunately, claimant's symptoms were not transient. He sought medical care initially on September 27, 2016 at the Memorial Hospital Emergency Room. The emergency room staff documented claimant with confusion, right-sided numbness and

tingling, shortness of breath, vague chest pain, fatigue, facial burning, and eye irritation. (Joint Exhibit 1, page 15)

Claimant was referred to Great River Medical Center for his pulmonary issues, where Alvin Dandan, M.D., diagnosed claimant with restrictive airway dysfunction syndrome (RADS) and referred claimant to Patrick Hartley, M.B., at the University of Iowa Hospitals and Clinics, for pulmonary workup and treatment. Defendants admit the pulmonary injury. Claimant continues to have pulmonary issues, requiring the use of rescuer inhalers and nebulizers. He has not required the use of supplemental oxygen since he was incarcerated, but attributes that to there being little in the way of allergens or irritants in the filtered air within the county jail.

Ultimately, Dr. Hartley (the treating pulmonologist) concludes that claimant sustained a significant functional limitation due to his pulmonary injury and opines that claimant sustained a 25 percent permanent impairment of the whole person as a result of his pulmonary injury on September 25, 2016. Dr. Hartley further opines that claimant cannot be an industrial maintenance electrician at this point as a result of his pulmonary injuries. He recommends claimant work at the sedentary level only and that he only work in a temperature controlled environment with good air conditioning. Dr. Hartley's opinions are at least partially supported by the causation opinions offered by Alvin Dandan, M.D., Jeremiah Reedy, M.D., and Claudia Corwin, M.D. (Joint Ex. 6, 16. 22) I accept the opinions of Dr. Hartley as credible and accurate as to causation, permanent impairment, and permanent restrictions related to claimant's pulmonary injury on September 25, 2016.

Claimant also asserts injuries to his eyes. Defendants admitted these injuries are related to the September 25, 2016 incident. Claimant continues to require eye drops for his eyes five times per day, as well as eyelid scrubs twice per day. Claimant described blurriness in his vision. Mark Greiner, M.D., causally connects the eye conditions to the work incident and that is accepted. (Joint Ex. 23) However, I identified no medical restrictions or impairment offered specific to the eye injuries resulting from the September 25, 2016 incident.

Defendants contest the remainder of claimant's alleged injuries or conditions are related to the work incident. First, claimant asserts he sustained neurological injury as a result of the September 25, 2016 injury at Federal Mogul. Anil Dhuna, M.D., a board certified neurologist, provided care for claimant's neurologic conditions both before and after the 2016 injury date. Dr. Dhuna opined that the claimant's tremors and symptoms after the 2013 incident were causally related to that incident and hydrogen sulfate exposure. As noted above, the prior deputy essentially rejected that opinion.

Not surprisingly, Dr. Dhuna again opines that the September 2016 injury is a significant contributing factor to claimant's current condition. Dr. Dhuna opines that the cumulative effects after the September 2016 injury have resulted in a significant injury and significant neurologic symptoms. Dr. Dhuna describes and opines that the 2016 injury resulted in and caused a significant progression of claimant's neurological symptoms. He notes claimant has tremors, reduced motor function, and cognitive

limitations, all of which are related to or worsened due to cumulative effects to the September 25, 2016 injury date. (Joint Ex. 18, p. 2) In support of his opinions, Dr. Dhuna points to a mild cerebral atrophy documented by a brain MRI performed after the 2016 injury date. Dr. Dhuna further opines that claimant is permanently disabled from returning to work as a result of these neurologic deficits. (Joint Ex. 18)

Dr. Corwin's opinions support a finding of a neurologic injury, as she opines that claimant's gait and balance deficiencies are related to the September 2016 injury date. (Joint Ex. 19, p. 3) However, Dr. Corwin also opines that she cannot causally connect claimant's memory loss to the events of September 25, 2016. (Joint Ex. 6, p. 9) Similarly, Dr. Corwin opines that she cannot causally connect claimant's right side weakness and cranial nerve weakness to the September 25, 2016 injury. (Joint Ex. 6, p. 9)

Michael Cullen, M.D., also performed an independent medical evaluation at the request of the defendants. Dr. Cullen documented nonorganic findings during his evaluation and noted a possible psychosomatic etiology for claimant's symptoms. (Defendants' Ex. L, p. 4) Ultimately, Dr. Cullen opined that claimant's gait and/or balance condition was not caused by or materially aggravated by the September 25, 2016 chemical exposure. Instead, Dr. Cullen opined that claimant's neurologic symptoms and findings after the September 25, 2016 incident are within the confines of the neurologic dysfunction that was diagnosed prior to that incident. Dr. Cullen opines that claimant has an intention tremor and that claimant sustained no permanent impairment and requires no neurologic restrictions as a result of the September 25, 2016 incident. (Defendants' Ex. L, pp. 6-7) Dr. Cullen's opinions appear similar to those offered by Dr. Gerr in the prior proceeding, which were accepted by the prior deputy commissioner.

As I ponder the competing opinions about claimant's neurologic conditions, I acknowledge that Dr. Dhuna has the beneficial position of having treated claimant both before and after the September 25, 2016 injury. Often, this results in a finding that such a physician is the most credible in a given situation. However, in this instance, I note that Dr. Dhuna's opinions were rejected in the prior worker's compensation proceeding. The facts were similar with exposure to hydrogen sulfide and a claim that that chemical exposure caused neurologic deficits.

I find it difficult to distinguish Dr. Dhuna's opinions and find his opinions credible in this situation, after they were rejected by the prior deputy commissioner on a similar (if not identical) issue in the prior proceeding. It is possible that I could find Dr. Dhuna's opinion about a progression of symptoms is reasonable and convincing. However, I simply struggle making that causal connection or finding of a substantial aggravation given that the opinion of Dr. Dhuna was rejected on basically the same causation issue in the prior proceeding. While claimant testified that his tremor is significantly worse since the September 25, 2016 incident, his testimony is not terribly credible.

I acknowledge Joint Exhibit 39, which is a medical research article related to brain damage caused by hydrogen sulfide. However, the undersigned is not a medical expert and relies upon medical experts to put information, such as a research article, into context. Joint Exhibit 39 does not significantly change my analysis or findings. Ultimately, I find the opinion of Dr. Cullen to be consistent with the previously accepted opinions of Dr. Gerr in the prior proceeding. I accept Dr. Cullen's opinions as most credible and convincing on the issue of neurologic injury claims. Therefore, I find that claimant has not proven his neurologic conditions (tremor, balance issues, memory, or cognitive issues) are causally related to or materially aggravated by the September 25, 2016 injury.

Mr. Cote also asserts he sustained a cardiac injury as a result of the September 25, 2016 chemical exposure at work. Three physicians have offered pertinent opinions on the cardiac injury claim. Claimant relies upon the opinion of Holly Novak, M.D. Dr. Novak treated claimant for cardiac issues prior to the September 25, 2016 work injury and continued treating him after that chemical exposure.

Dr. Novak opined that claimant did not experience atrial fibrillation prior to the September 25, 2016 work incident. Subsequent to the work incident, she recommended installation of a pacemaker due to the atrial fibrillation. With respect to causation of the atrial fibrillation, Dr. Novak opined, "These episodes began occurring after the industrial exposure, and I am of the opinion that the cardiac arrhythmias are causally related within a reasonable degree of medical certainty to the incident of September 25, 2016." (Joint Ex. 20, p. 1) Dr. Novak reiterated this opinion in a subsequent report prepared by claimant's counsel and noted claimant achieved maximum medical improvement (MMI) by December 2018. She recommended claimant limit any lifting to "very light lifting." She opined, "Sedentary activities would be most appropriate given his condition." (Joint Ex. 20, p. 3)

Defendants countered with the opinions of Donald D. Brown, M.D., a professor at the University of Iowa Hospitals and Clinics and a specialist in cardiovascular medicine. Dr. Brown provided a convincing explanation and opinion. Dr. Brown explained that claimant's documented atrial fibrillation occurred when he had a low potassium level in his body. Dr. Brown explained, "A low serum potassium level is a well know[n] precipitant of heart rhythm abnormalities." (Defendants Ex. M, p. 2)

Review of Dr. Novak's treatment records confirm Dr. Brown's explanation. On November 15, 2017, Dr. Novak rendered care to claimant and noted, "When his potassium is low, he has more rhythm problems." (Joint Ex. 3, p.13) In this sense, Dr. Novak provides a similar opinion to that offered by Dr. Brown. However, Dr. Novak's analysis is more thorough on the issue. She further explains, "The pulmonary medications he takes seem to drop his potassium." (Joint Ex. 3, p. 13)

There is contrary evidence in the record, which suggests the potassium drop may be the result of diuretic usage. (Joint Ex. 2, p. 25) However, I note that a third physician, Dr. Hartley, weighed in on this issue. As the pulmonary specialist treating claimant, Dr. Hartley confirmed in an e-mail to claimant that the albuterol he uses for his

pulmonary condition, "can lower your potassium, and if you are using the albuterol a lot, it may be a significant factor, and your potassium supplements may need to be adjusted." (Joint Ex. 7, p. 1)

In other words, Dr. Hartley confirmed that the pulmonary medications can decrease claimant's potassium levels. Both Dr. Novak and Dr. Brown identify the drop in potassium levels as the cause of claimant's atrial fibrillation. While I accept Dr. Brown's explanation that the atrial fibrillation is caused by low potassium levels, I find the opinions of Dr. Novak and Dr. Hartley to be more thorough and convincing because they consider why claimant's potassium levels are lowered.

Specifically, I find that claimant uses his albuterol quite often for his pulmonary injuries and condition. The use of his albuterol can and does decrease his potassium levels. The decrease in claimant's potassium levels causes atrial fibrillation. Claimant's atrial fibrillation required the implantation of a pacemaker.

Ultimately, I find that the claimant's cardiac problems, including implantation of a pacemaker and atrial fibrillation are sequela of and related to his use of medications to treat his admitted pulmonary injury. Therefore, I find that claimant has proven his need for a pacemaker and treatment of atrial fibrillation (a cardiac injury) is causally related to or a sequela of the September 25, 2016 work injury. I accept Dr. Novak's opinion that claimant is at maximum medical improvement for the cardiac injury and accept her opinion that he is limited to very light lifting and sedentary work.

The final injury claimed by Mr. Cote as related to the September 25, 2016 events is a left shoulder injury. First, I must address how the injury allegedly occurred. Claimant testified that he passed out and does not know how he got to the floor. He theorizes and speculates that he fell onto his left side causing the left shoulder injury. However, claimant cannot be sure of this and there are no witnesses to this incident.

Once again, there are competing medical opinions addressing the left shoulder injury claim. Claimant points to and relies upon the medical opinion of David M. Bingham, D.O. Dr. Bingham evaluated claimant on February 7, 2017. Dr. Bingham documents that claimant lost consciousness immediately, "apparently falling forward onto the battery, and then onto his left side." (Joint Ex. 10, p. 1) As noted above, I am not convinced that claimant or Dr. Bingham necessarily know how the claimant fell without claimant being conscious and without an eyewitness.

At any rate, Dr. Bingham documents that claimant "has [had] significant pain in his left shoulder ever since then." (Joint Ex. 10, p. 1) Yet, claimant did not seek medical care or referral for his left shoulder between September 25, 2016 and his evaluation with Dr. Bingham in February 2017, more than four months after the work incident. Nevertheless, Dr. Bingham opines, "In my opinion, the pain in his left shoulder was directly caused by the incident at work, when he fell on his left side." (Joint Ex. 10, p. 4) Claimant ultimately underwent an MRI of the left shoulder, which demonstrated "mild tendinitis of the supraspinatus tendon with a low-grade tear of less than 25% thickness of the tendon fiber." (Joint Ex. 10, pp. 9-10)

Defense counsel subsequently approached Dr. Bingham, inquiring of whether he would review claimant's other medical records to address the causation issue of his left shoulder injury. At the time defense counsel approached him; Dr. Bingham was in the process of leaving his practice at Quincy Medical Group and did not have time or agree to review additional medical records. Instead, he signed correspondence prepared by defense counsel noting that his causation opinion "was based entirely on the history provided by Mr. Cote as well as [his] physical examination." (Defendants' Ex. J, p. 1) Dr. Cote indicated that it was possible his opinion on causation could change, but he could not provide a definitive opinion on causation "without having an opportunity to review all the medical records and statements." (Defendants' Ex. J, p. 1)

Defendants then obtained a records review and opinion from Joshua Kimelman, D.O., an orthopaedic surgeon. Dr. Kimelman noted, "[T]here is no contemporaneous complaint of shoulder pain." (Defendants' Ex. N, p. 1) Dr. Kimelman further opines, "I would expect, if, at the time of the fall when he passed out after exposure to the gas coming from the battery and there was significant injury to the shoulder, he would have complained prior to February 9, 2017." (Defendants' Ex. N, p. 1)

Dr. Kimelman noted that claimant's MRI was consistent with impingement syndrome and documented osteoarthritic changes, which are not consistent with posttraumatic findings. (Defendants' Ex. N, p. 1) Ultimately, Dr. Kimelman opines, "I do not believe that Mr. Cote's records indicate that he had a work-related condition to the left shoulder." (Defendants' Ex. N, p. 2)

With respect to the left shoulder, I note that Dr. Bingham had an opportunity to physically evaluate claimant. In this sense, he may have a better opportunity to visualize the shoulder in relation to the alleged injury. On the other hand, Dr. Bingham is not an orthopaedic surgeon. Dr. Kimelman certainly has better qualifications to offer a causation opinion as an orthopaedic surgeon. While he did not have a chance to evaluate claimant and relies only on medical records, I tend to agree with his analysis that I would have expected claimant to report ongoing left shoulder symptoms sooner in the four-month period after his work incident if they were continuous as reported to Dr. Bingham.

Ultimately, I find that claimant cannot be certain whether he even landed on the left shoulder when he fell on September 25, 2016. No witnesses can corroborate the manner of fall or how claimant landed. Claimant did not report ongoing significant left shoulder symptoms during the four-month period after the work incident. Dr. Bingham wavered in his causation opinion in his last report, and Dr. Kimelman explained that the findings in the left shoulder MRI were not indicative of posttraumatic findings. I find that claimant failed to prove by a preponderance of the evidence that his left shoulder symptoms or condition are causally related to the September 25, 2016 work incident at Federal Mogul.

The next issue for determination is the extent of claimant's permanent disability related to the September 25, 2016 incident. Obviously, only conditions that are proven causally related to the incident can be considered in assessing or determining

permanent disability. Based on the above findings, I assess claimant's permanent disability based on the proven work injuries involving his eyes, pulmonary system, and cardiac condition.

Claimant is likely to require ongoing treatment for all of these conditions, including the eye drops and lid scrub for his eyes. He is likely to require ongoing evaluation and medications for his pulmonary condition and he may require additional evaluation and treatment for his atrial fibrillation, including his pacemaker, into the future. However, I find that claimant is at maximum medical improvement such that no improvement is anticipated in the near future for any of these conditions. As noted above, there are no opinions offering permanent impairment for claimant's eye conditions or his cardiac conditions. Dr. Hartley opined that claimant sustained a 25 percent permanent functional impairment of the whole person for his pulmonary injury. That impairment rating is accepted as accurate for the pulmonary condition.

No permanent work restrictions have been imposed for claimant's eye condition. With respect to his cardiac condition, Dr. Novak opined that claimant can only perform very light lifting. That restriction is accepted, though it is not specific as to claimant's residual abilities. Dr. Novak and Dr. Hartley both opine that claimant is capable of returning to work at the sedentary level. Dr. Hartley also opines that claimant requires a temperature controlled environment with good air conditioning to return to work.

The restrictions imposed by Dr. Novak and Dr. Hartley are accepted. I find that claimant is capable of returning to work in some capacity but that he is significantly restricted as a result of the September 25, 2016 injury and incapable of working above the sedentary level or in an unregulated temperature setting. These restrictions significantly reduce claimant's available job market and significantly increase his anticipated loss of future earnings. Obviously, claimant's incarceration at the present time makes it impossible for him to pursue, apply for, or accept employment. However, his incarceration is not related to his work injury. Therefore, I consider his loss of future earning capacity without consideration of his incarceration status and assume he could pursue work when released from jail.

I note that claimant would be precluded from returning to many of the positions he has held in the past under the restrictions offered by Dr. Novak and Dr. Hartley. However, claimant likely could own a business, such as his prior gift shop, where he could control the temperature and environment and hire others to perform physical tasks. Ultimately, I conclude that claimant has not proven he is permanently and totally disabled. Considering claimant's age, educational background, employment history, permanent restrictions, permanent functional impairment, motivation, the situs and severity of his injuries, the unlikelihood that he is going to pursue significant additional education or training at his age, I find that claimant has proven a 75 percent loss of future earning capacity as a result of the September 25, 2016 work injury.

CONCLUSIONS OF LAW

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

Defendants stipulate that claimant sustained an injury as a result of his work exposure on September 25, 2016. Specifically, defendants admit that claimant sustained a pulmonary injury and eye injuries as a result of the September 25, 2016 chemical exposure. However, defendants deny whether claimant sustained a neurologic injury, a cardiovascular injury, or a left shoulder injury.

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found that claimant failed to prove a causal connection between the September 25, 2016 work incident and his alleged neurologic or left shoulder injuries. However, claimant did prove he sustained injuries to his eyes, pulmonary function, and a cardiac injury (atrial fibrillation with implantation of a pacemaker) as a result of the work incident. Therefore, I conclude claimant has proven a compensable work injury on September 25, 2016 and that he sustained permanent disability as a result of that work injury.

Claimant's condition involves injuries that are not within the schedule provided in Iowa Code section 85.34(2)(a)-(t) (2016). Accordingly, claimant's injuries are unscheduled and compensated with industrial disability benefits. Iowa Code section 85.34(2)(u) (2016).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having found that claimant failed to prove causal connection of his alleged neurologic conditions and his left shoulder, I conclude he is not entitled to compensation for those conditions. Therefore, I considered claimant's injuries to the eyes, his pulmonary system, and his cardiac injuries in determining his loss of future earning capacity. Having considered claimant's age, educational background, employment history, motivation, permanent impairment, permanent restrictions, inability to retrain,

and all other factors of industrial disability outlined by the Iowa Supreme Court, I found that claimant proved he sustained a 75 percent loss of future earning capacity as a result of the September 25, 2016 work injury.

A finding of a 75 percent loss of future earning capacity entitles claimant to an award of a 75 percent industrial disability. Unscheduled injuries are compensated based on a proportion of the industrial disability to 500 weeks. Therefore, a 75 percent industrial disability entitles claimant to an award of 375 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u) (2016).

Claimant also asserts a claim for award of past medical expenses. However, the parties stipulated in the hearing report attachment that, if any of the disputed injuries or conditions were found to be compensable:

> medical would be awarded for that care and the Defendants would have a credit for health insurance payments through the health insurance that was paid in part by the employer under Iowa Code section 85.38(2). The details of the credit, out of pockets and outstanding charges would be worked out by the parties post decision.

Medical benefits related to the cardiac injury claim are hereby awarded pursuant to the parties' stipulation. It is presumed, based on the stipulation, that the parties can determine what medical expenses are related to the cardiac injury claim. Defendants are also given credit for health insurance benefits paid pursuant to Iowa Code section 85.38(2). If the parties cannot work out an agreement as to medical owed or the credit to which defendants are entitled, they should file a request for rehearing within the applicable deadline for further findings and determination on past medical issues.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant three hundred seventy-five (375) weeks of permanent partial disability benefits commencing on July 12, 2018.

All weekly benefits shall be payable at the stipulated weekly rate of seven hundred eighty-six and 74/100 dollars ($786.74) per week.

Defendants are entitled to the stipulated credit for benefits paid against this award.

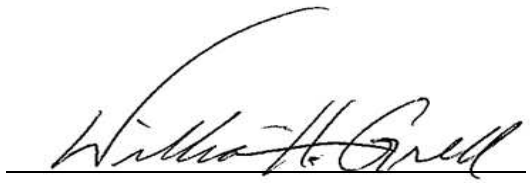
The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants are ordered to pay, reimburse, or otherwise satisfy and hold claimant harmless for all past medical expenses related to treatment of claimant's cardiac injury and condition.

Defendants are entitled to a credit against the medical benefit award for all medical expenses paid pursuant to Iowa Code section 85.38(2).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this __21st__ day of December, 2021.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Julie Burger (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.