BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONALD BENSON, Claimant, vs. JOHN DEERE DUBUQUE WORKS, Employer, Self-Insured, Defendant.	: : : : : : : : : : : :	File No. 20014076.01 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1700, 1800, 1802, 1803, 2200, 2500, 2700, 3800, 4000.2

STATEMENT OF THE CASE

The claimant, Ronald Benson, filed a petition for arbitration seeking workers' compensation benefits from self-insured employer John Deere Dubuque Works of Deere & Company ("Deere"). Zeke McCartney appeared on behalf of the claimant. Dirk Hamel appeared on behalf of the defendant.

The matter came on for hearing on October 4, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-7, Claimant's Exhibit 1-4, and Defendant's Exhibits A-F. The claimant testified on his own behalf. Stephanie Cousins was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on November 5, 2021, after briefing by the parties.

STIPULATIONS

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

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

2. If the defendant is liable for the alleged injury, the claimant is entitled to benefits from March 19, 2019, through April 21, 2019, and July 16, 2019, through August 4, 2019.

3. If the defendant is liable for the alleged injury, the claimant was off work from March 19, 2019, through April 21, 2019, and July 16, 2019, through August 4, 2019.

4. If the injury is found to be a cause of permanent disability, the disability is a scheduled member disability to the bilateral upper extremities.

5. The claimant's gross earnings were nine hundred twenty-four and 91/100 dollars ($924.91) per week. He was married, and entitled to two exemptions. This resulted in a weekly compensation rate of six hundred two and 73/100 dollars ($602.73).

6. With regard to disputed medical expenses:

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

7. That, the defendant is entitled to credit under Iowa Code section 85.38(2) for payment of sick pay or disability income in the amount of three thousand four hundred eighty-six and 58/100 dollars ($3,486.58).

The defendant waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury, which arose out of and in the course of employment on September 4, 2018.

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

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

4. Whether the claimant is entitled to either temporary total disability, temporary partial disability, or healing period benefits for the following time periods: March 19, 2019, through April 21, 2019, and July 16, 2019, through August 4, 2019.

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

6. Whether the proper commencement date for permanent partial benefits (should any be awarded) is July 16, 2020.

7. Whether the claimant is entitled to payment of medical expenses.

8. With regard to the disputed medical expenses:

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

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

10. Whether the claimant is entitled to reimbursement for medical mileage.

11. Whether imposition of a penalty is appropriate.

12. Whether the claimant is entitled to a specific taxation of costs.

FINDINGS OF FACT

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

Ronald Benson, the claimant, was 52 years old at the time of the hearing. (Testimony). He is married, and lives in Dubuque, Iowa. (Testimony). He is left handed. (Testimony). His highest level of education is graduation from Dubuque Hempstead High School. (Testimony).

In September of 2017, Mr. Benson began work for Deere. (Testimony). He worked in the skid-steer department as a floater. (Testimony). He assembled pumps, built parts, attached fitting, and applied bolts. (Testimony). This was known as Department 151. (Testimony). He also had to use a torque gun in this job. (Testimony). Some of the times, he used a high torque gun and other times, he used a low torque gun, while still other times, he used his hands. (Testimony).

In July of 2018, Mr. Benson moved to Department 154. (Testimony). In this job, he picked up parts from a blast and put them on carts. (Testimony). He testified that the parts weighed upwards of 50 to 60 pounds. (Testimony). He later clarified that the

individual parts weighed less than 50 to 60 pounds, but indicated that he lifted multiple parts at the same time. (Testimony).

Mr. Benson had no prior issues with his hands and wrists. (Testimony). He noticed some problems beginning in the spring or early summer of 2018. (Testimony). Initially, switching positions in July of 2018 helped his hand symptoms, but the pain came back. (Testimony). By August of 2018, Mr. Benson reported that he dropped something due to the pain. (Testimony). At that time, he felt that the pain could represent more of an issue. (Testimony).

On August 10, 2018, the claimant reported to Deere Occupational Health. (Joint Exhibit 1:22). Jill Hunt, M.D., examined him for complaints of lower back pain after "tweaking" his lower back. (JE 1:22). Dr. Hunt opined that the lower back pain was resolved, and that Mr. Benson also displayed non work-related exacerbation of his COPD. (JE 1:22). Dr. Hunt is board certified in Occupational and Environmental Medicine. (Defendant's Exhibit C:9).

Mr. Benson returned to Deere Occupational Health on September 4, 2018, where Amanda Addison, N.P., and Janelle Garriott, R.N., examined him. (JE 1:21-22). During that visit, he told Ms. Addison that his bilateral fingertips were numb. (JE 1:21). The numbness began in both of his hands and fingertips "a couple months ago." (JE 1:21). He also had shooting pain in his bilateral wrists. (JE 1:21). His symptoms occurred at night. (JE 1:21-22). Mr. Benson felt that the injury occurred while he was in Department 151, but noted that moving to Department 154 provided improvement to his symptoms. (JE 1:21-22). Ms. Addison diagnosed him with bilateral hand numbness and pain. (JE 1:22). She provided no restrictions and recommended that he take ibuprofen and ice his hands two to three times per day. (JE 1:22). Deere Occupational Health scheduled "ART" with "Spine and Sport" for later in the day on September 4, 2018. (JE 1:21). Ms. Garriott opined that it was a "questionable" injury and that causation needed to be confirmed by "Medical Department." (JE 1:20).

On September 11, 2018, Mr. Benson continued his follow up with Deere Occupational Health and Ms. Addison. (JE 1:17). Mr. Benson reported attending one ART session, which did not provide relief. (JE 1:17). He wore braces, which helped relieve numbness. (JE 1:17). He continued to ice while at home. (JE 1:17). Ms. Addison's recommendations for "ART," ibuprofen, and icing, did not change from the September 4, 2018, visit. (JE 1:17).

Dr. Hunt examined Mr. Benson again on September 19, 2018. (JE 1:15-17). Mr. Benson complained of bilateral wrist pain. (JE 1:15). He reported no pain during work until the day prior. (JE 1:15). Dr. Hunt observed no changes in range of motion. (JE 1:17). Dr. Hunt noted that "ART" was helping. (JE 1:17). He could perform his job without restrictions. (JE 1:17). Dr. Hunt recommended that Mr. Benson continue taking NSAIDs, using ice, using splints, and continue "ART." (JE 1:17).

On September 21, 2018, Mr. Benson returned to Deere Occupational Health, and met with Dr. Hunt. (JE 1:15). Mr. Benson had no pain or change in range of motion. (JE 1:15). He also had no restrictions on his job. (JE 1:15). Mr. Benson told Dr. Hunt that "ART" was not helping. (JE 1:15). Dr. Hunt told Mr. Benson that his bilateral hand numbness was not work related. (JE 1:15). Dr. Hunt indicated that carpal tunnel syndrome is a "multifactorial disease which may be work related but also occurs frequently in the general population." (JE 1:15). Dr. Hunt further noted that "[t]he only work-related risks with strong evidence of causation involve a combination of force and repetition, force and posture, or forceful work alone." (JE 1:15). Dr. Hunt opined that neither of Mr. Benson's jobs meet these criteria. (JE 1:15). Dr. Hunt further cited to non-work-related risk factors such as Mr. Benson's age and elevated body mass index. (JE 1:15). Dr. Hunt concluded by diagnosing Mr. Benson with probable early carpal tunnel syndrome. (JE 1:15). Dr. Hunt issued a discharge order and indicated that "ART" should cease. (JE 1:14). She also recommended that Mr. Benson follow up with his personal physician. (JE 1:13).

Deere completed an incident and investigation form in September of 2018. (DE A). The investigation involved Dr. Hunt, Mr. Benson, Safety Analyst Josh Nowicki, and the claimant's supervisor Chris Mohr. (DE A). Mr. Benson related that he began having hand numbness and pain bilaterally at night a couple months prior. (DE A:1). The report noted Mr. Benson's job duties. (DE A:2-3). Mr. Benson indicated that he had a shooting pain on August 31, 2018, which caused him to drop a part. The report includes a timeline as follows:

> September 18, 2017 – Claimant hired by Deere
>
> March 12, 2018 – Mr. Benson placed in Department 151
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> June 11, 2018 – Mr. Benson began experiencing numbness and tingling
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> July 16, 2018 – Mr. Benson bid to Department 154
>
> July 23, 2018 – Mr. Benson improved
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> July 28, 2018 to August 5, 2018 – Plant Shut Down
>
> August 28, 2018 – Mr. Benson began waking at night with numbness and tingling
>
> August 31, 2018 – Mr. Benson had sharp pain in his left hand from picking up a 30-pound part
>
> September 4, 2018 – Incident reported to Deere Occupational Health

(DE A:3). After the report is a form indicating that both the safety person and Dr. Hunt signed, which denies Mr. Benson's claim as unrelated to workers' compensation. (DE B:6).

On September 21, 2018, counsel for Deere drafted a missive to Mr. Benson in which Deere confirmed its denial of Mr. Benson's workers' compensation injury to both hands. (DE B:7-8). Counsel reiterated Dr. Hunt's opinions and concluded by denying the claim. (DE B:7-8).

Mr. Benson reported to Dubuque Orthopedic Surgeons, where he was examined by Ryan Cloos, D.O., on February 11, 2019. (JE 2:24). Mr. Benson complained of bilateral wrist pain, numbness, and tingling that bothered him for "a few months now." (JE 2:24). The pain progressively worsened and woke him at night. (JE 2:24). Mr. Benson told Dr. Cloos that he used braces on his wrists with no improvement. (JE 2:24). Mr. Benson denied any injury. (JE 2:24). Upon physical examination, Dr. Cloos found a positive Tinel's sign of the median nerve of both wrists and a positive median nerve compression test. (JE 2:24). Dr. Cloos diagnosed Mr. Benson with bilateral carpal tunnel syndrome which was worse on the right than the left. (JE 2:24). Dr. Cloos recommended an EMG. (JE 2:24).

On February 15, 2019, Mr. Benson had an EMG of the bilateral upper extremities. (JE 3:31-35). Ronald Sims, M.D., interpreted the EMG results. (JE 3:35). Mr. Benson reported paresthesia of the fingers in either hand that began "more than a month ago." (JE 3:31). The EMGs showed medium severity bilateral median neuropathy at the wrist. (JE 3:35).

In a note dated February 20, 2019, Dr. Cloos reviewed the EMGs. (JE 2:26). The EMG showed "medium bilateral carpal tunnel syndrome." (JE 2:26). Dr. Cloos noted, "[w]e can set him up with surgery if he wants." (JE 2:26). Mr. Benson agreed to proceed with surgery. (JE 2:26).

Dr. Cloos provided a work release dated March 1, 2019. (JE 2:25). Dr. Cloos indicated that a date of return would be April 22, 2019. (JE 2:25).

Mr. Benson had a preoperative visit at Grand River Medical Group on March 6, 2019, ahead of his scheduled carpal tunnel release. (JE 4:36-37). The doctor opined that Mr. Benson was low risk for surgery. (JE 4:37).

In early March of 2019, Mr. Benson applied for weekly indemnity disability benefits due to his scheduled carpal tunnel release surgery. (JE 1:12).

On March 18, 2019, Ms. Addison examined Mr. Benson again at Deere Occupational Health. (JE 1:11). He complained of upper back pain and tenderness over his thoracic spine. (JE 1:11). Ms. Addison recommended that Mr. Benson take Tylenol as needed. (JE 1:11).

Mr. Benson reported to DBF Preop on March 19, 2019. (JE 5:41-44). Dr. Cloos performed a left endoscopic carpal tunnel release for Mr. Benson's left carpal tunnel syndrome. (JE 5:41). Mr. Benson tolerated the procedure well, and Dr. Cloos recommended that Mr. Benson return to Dr. Cloos' office in 10 to 14 days. (JE 5:42).

On April 1, 2019, Mr. Benson returned to Dr. Cloos' office for a post-surgical follow-up. (JE 2:26). Mr. Benson continued to have "a little bit of tingling in the tip of his 3rd [*sic*] finger" on his left hand. (JE 2:26). His pain in the evening was gone. (JE 2:26). Dr. Cloos recommended that he return in two weeks. (JE 2:26). At that time, Dr. Cloos was hopeful Mr. Benson could return to work. (JE 2:26).

Dr. Cloos examined Mr. Benson again on April 18, 2019. (JE 2:26). Mr. Benson reported that he was doing "much better." (JE 2:26). Mr. Benson has no residual numbness or tingling in the left hand. (JE 2:26). He also displayed good strength and muscle testing. (JE 2:26). Dr. Cloos opined that Mr. Benson was ready to go back to work. (JE 2:28). Dr. Cloos released Mr. Benson to return to work regular duty on April 22, 2019. (JE 2:27).

Ms. Addison saw Mr. Benson again on April 22, 2019. (JE 1:8). Mr. Benson was attempting to return to work after his carpal tunnel surgery. (JE 1:8). Ms. Addison noted well healed incisions and full range of motion in both of Mr. Benson's hands. (JE 1:8). Ms. Addison allowed Mr. Benson to return to work on a full duty basis. (JE 1:8). Mr. Benson also told Ms. Addison that his upper back pain had "mostly" resolved. (JE 1:8).

On June 24, 2019, Mr. Benson returned to Dr. Cloos' office with complaints of progressively worsening right wrist pain. (JE 2:28). Mr. Benson felt that it was time to proceed to surgery. (JE 2:28). He continued to have pain on the left side which Dr. Cloos called "pillar-type pain." (JE 2:28). He had no recurrence of numbness or tingling on the left side, and no longer had pain at night. (JE 2:28).

During a June 25, 2019, visit with Ms. Addison, Mr. Benson continued to complain of upper back pain when picking up tools with his arm extended. (JE 1:6). Pushing down and pulling with force also causes pain. (JE 1:6).

In July of 2019, Mr. Benson filled out additional weekly indemnity paperwork for his upcoming surgery. (JE 1:6).

Mr. Benson had a pre-operative visit for his recommended right wrist carpal tunnel release on July 16, 2019. (JE 4:38-39). The doctor opined that Mr. Benson was low risk for surgery. (JE 4:39).

On July 15, 2019, Mr. Benson returned to John Deere Occupational Health and visited with Ms. Addison for complaints of upper back pain between the shoulder blades. (JE 1:3). His pain increased when pushing down with force. (JE 1:3). He did not have mobility issues, and was diagnosed with thoracic spine pain. (JE 1:6). Ms. Addison recommended that Mr. Benson stop physical therapy, but continue ice/heat as needed. (JE 1:6). Ms. Addison also ordered x-rays of the cervical spine and thoracic spine. (JE 1:6).

Mr. Benson again reported to DBF Preop on July 16, 2019. (JE 5:44). Dr. Cloos performed a right endoscopic carpal tunnel release due to Mr. Benson's right carpal tunnel syndrome. (JE 5:44-46). Mr. Benson tolerated the procedure well, and Dr. Cloos recommended that he follow-up in 10 to 14 days. (JE 5:46).

Dr. Cloos signed a weekly indemnity application form for Mr. Benson. (JE 1:4). Dr. Cloos checked a box in the section that "must be completed by attending physician [*sic*]" indicating that the right carpal tunnel syndrome was not due to an injury or sickness arising out of Mr. Benson's employment. (JE 1:4)(emphasis added). There is no indication in any other medical records that Dr. Cloos adopted or expressed this opinion.

Mr. Benson had a post-surgical follow-up with Dr. Cloos on July 26, 2019. (JE 2:28-29). Mr. Benson reported he was "happy" that he had surgery and had improvement in his pain since the surgery. (JE 2:28). He told Dr. Cloos that the sensation in his right hand was "pretty much back to normal." (JE 2:28). Dr. Cloos opined, "I think he is doing very well. I gave him a note to go back to work. He is going to slowly continue to increase the use of it." (JE 2:29). Dr. Cloos noted that he may return to work with no restrictions effective July 29, 2019. (JE 2:30).

A form included in the exhibits indicated that Mr. Benson had a return-to-work evaluation on August 5, 2019. (JE 1:2). The form noted that the claimant could return to work on August 5, 2019. (JE 1:2). At that time, Mr. Benson also told Ms. Addison that he felt that he could return to full duty work without difficulty. (JE 1:3). He also denied using sedating medications. (JE 1:3). He could fully extend his hand, and make a fist. (JE 1:3). He had "good sensation and good strength." (JE 1:3).

On August 14, 2019, Ms. Addison signed a form indicating that Mr. Benson achieved "MMI w/ no impairment." (JE 1:1). Mr. Benson also signed this form. (JE 1:1).

In November of 2020, Mr. Benson moved to a new job in Department 161 at Deere. (Testimony). He is a laser operator. (Testimony). He works with sheet metal. (Testimony). He uses a pry bar where possible in order to move sheet metal. (Testimony).

On August 19, 2021, Robin Sassman, M.D., M.P.H., M.B.A., M.C.I.M.E., C.L.C.P., examined Mr. Benson for an IME. (Claimant's Exhibit 4:14-24). Dr. Sassman issued a report on September 3, 2021, outlining the findings from the IME. (CE 4:14-24). Dr. Sassman is board certified in occupational and environmental medicine, and is a master certified independent medical examiner. (CE 4:14). In preparing for the IME and writing the report, Dr. Sassman reviewed pertinent medical records. (CE 4:14-18). Mr. Benson told Dr. Sassman that he reported his injury on September 1, 2018, but that he had symptoms prior to that date. (CE 4:15). This included waking at night with numbness, slightly worse on the left than the right. (CE 4:15). The symptoms progressively worsened after using torque guns. (CE 4:15). Dr. Sassman also

reviewed the position descriptions for the Assembler, Miscellaneous Processor, and CNC Sheet and Plate Fabricator positions. (CE 4:17).

During the examination, Mr. Benson reported pain in his right wrist, especially when lifting something heavy. (CE 4:18). He also had some weakness in both hands. (CE 4:18). He told Dr. Sassman that "approximately 6 weeks ago his symptoms began to return" mainly on the right side. (CE 4:18). Upon physical examination, Mr. Benson demonstrated a full range of motion of the bilateral wrists and digits. (CE 4:20). He also showed a loss of strength in the APB muscle in both hands. (CE 4:20). Dr. Sassman diagnosed Mr. Benson with right and left carpal tunnel syndrome post endoscopic release by Dr. Cloos. (CE 4:20).

Dr. Sassman opined that the work that Mr. Benson performed at Deere was "a substantial factor in the development of his bilateral carpal tunnel syndrome, the need for his surgery, and his ongoing symptoms." (CE 4:21). Dr. Sassman bolstered her opinion by stating:

> Mr. Benson had to repetitively and forcefully grip and grasp as he performed his job duties . . . . Specifically, he had to repetitively and forcefully grip and grasp tools and parts as he disassembled and repaired assemblies, performed maintenance, adjusted equipment, used hand and power tools, pressed bearing, deburred and buffed parts as well as general maintenance duties of the equipment.

(CE 4:21). Dr. Sassman continued in opining that these activities placed Mr. Benson at an increased risk for development of compression neuropathy, like carpal tunnel syndrome. (CE 4:21). Dr. Sassman placed Mr. Benson at MMI on July 16, 2020. (CE 4:21). She recommended that Mr. Benson follow up with Dr. Cloos should his symptoms worsen. (CE 4:21). Dr. Sassman recommended permanent restrictions including limitation of repetitive and forceful gripping and grasping with both hands to only an occasional basis. (CE 4:23). Dr. Sassman further recommended that Mr. Benson limit the use of vibratory or power tools to an occasional basis. (CE 4:23).

Dr. Sassman provided an in-depth discussion of her impairment rating and its basis in the AMA Guides to the Evaluation of Impairment, Fifth Edition. (CE 4:22). Dr. Sassman used Table 16-10 regarding to opine that Mr. Benson had a Grade 5 impairment with a zero percent sensory deficit. (CE 4:22). He also had a Category 4 motor strength deficit pursuant to Table 16-11 with a 25 percent motor deficit. (CE 4:22). According to Dr. Sassman, this is then multiplied by the maximum percentage of upper extremity motor deficit of the median nerve in Table 16-15, which equals a 10 percent upper extremity impairment. (CE 4:22). Dr. Sassman continued in noting that 10 percent x 25 percent is 2.5 percent which is rounded up to a 3 percent upper extremity impairment. (CE 4:22). This converted to a 2 percent whole person impairment rating. (CE 4:22). Dr. Sassman came to the same conclusions in regard to the left upper extremity. (CE 4:22). She concluded by using the Combined Values Chart on page 604 of the Guides to assign Mr. Benson a 4 percent whole person impairment rating. (CE 4:22).

At times, the Deere plant would shut down. (Testimony). During this time, Mr. Benson would be off work. (Testimony). He noticed that his pain subsided when he was off work during this time. (Testimony).

Mr. Benson returned to Department 151 and was lifting heavier parts. (Testimony). He testified that he wanted an easier job due to his hand issues, and felt that dropping parts could be dangerous. (Testimony).

Since having surgery, Mr. Benson has noticed that he has reduced strength and grip strength in both wrists and hands. (Testimony). His pain improved. (Testimony). However, he still has pain two to three times per week in his wrists. (Testimony). He testified that the pain is located in the bottom of his palm and top of his wrist. (Testimony). The claimant also attempts to avoid lifting heavy objects and uses tools where possible in order to avoid aggravating his wrists. (Testimony). He testified that he has problems opening jars and shoveling heavy snow. (Testimony).

Mr. Benson has no future care scheduled at this time, but may need an unspecified surgery in the future. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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

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

> because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

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

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

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part of all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or unusual occurrence. Injuries which result from cumulative trauma are compensable. However, increased disability from a prior injury,

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

Mr. Benson testified credibly in this matter. He noted no issues with pain in his wrists or hands prior to his employment with Deere. Additionally, there are no medical records in evidence that indicate previous issues with his hands or wrists.

In this case, the claimant began working for Deere in September of 2017. He worked for a time as a floater. He used high torque and low torque guns in order to tighten nuts and bolts. He estimated that about 25 percent of his day was spent using high torque guns, 25 percent of his day was spent turning nuts by hand, and 50 percent of his day was spent using low torque guns. Mr. Benson first noticed numbness and tingling in his upper extremities around June 11, 2018. He then moved to Department 154, where he worked as a blast operator in July of 2018. He turned a machine on at the beginning of the day, and then began moving parts back and forth. He picked up multiple parts at a time that would weigh a total of 50 to 60 pounds. After switching departments or jobs, his pain situation improved. The Deere plant then shut down from July 28, 2018, to August 5, 2018. After returning to work, Mr. Benson began waking with numbness and tingling in late August of 2018. On August 31, 2018, Mr. Benson experienced a sharp pain while picking up a part. This caused him to drop the part.

In September of 2018, Mr. Benson reported to Deere Occupational Health where Dr. Hunt and Ms. Addison examined him on different occasions. He reported numbness to his bilateral fingertips and shooting pain in his wrists. He was set up for therapy, which included inconsistent notations in the Deere records. During one week, his therapy helped, but another week it did not. It is unclear if this is faulty notetaking by Dr. Hunt or Ms. Addison, or inconsistent reporting by Mr. Benson.

Deere undertook a review of Mr. Benson's alleged injuries and his job duties at Deere in late September of 2018. The review included Deere employees, such as Dr. Hunt, and Mr. Benson's supervisor. Dr. Hunt diagnosed Mr. Benson with probable early carpal tunnel syndrome. She further opined that this was not a work-related condition. In support of this proposition, Dr. Hunt noted that carpal tunnel syndrome is a "multifactorial disease which may be work related but also occurs frequently in the general population." Dr. Hunt further opined that "[t]he only work-related risks with strong evidence of causation involve a combination of force and repetition, force and posture, or forceful work alone." Dr. Hunt concluded that neither of Mr. Benson's jobs meet these criteria. Finally, Dr. Hunt cited to non-work-related risk factors such as Mr. Benson's age and elevated body mass index. Dr. Hunt signed off on a letter authorizing a denial of Mr. Benson's workers' compensation claims.

Mr. Benson then undertook a course of treatment with Dr. Cloos. Dr. Cloos reviewed an EMG and diagnosed Mr. Benson with medium severity bilateral carpal tunnel. On March 19, 2019, Dr. Cloos performed a left carpal tunnel release on Mr. Benson. Mr. Benson returned to Dr. Cloos' office in July of 2019, at which time, Dr. Cloos performed a right carpal tunnel release.

The claimant retained Dr. Sassman to perform an IME. The defendant alleges that Dr. Sassman's opinions are fatally flawed due to the weight amounts discussed by the claimant; however, the claimant credibly testified that he lifted multiple parts at a time, which would result in the weights considered by Dr. Sassman. Additionally, Dr. Sassman reviewed Deere job descriptions in coming to her opinions. Based upon her interview with the claimant, examination, review of the medical records, and review of the job descriptions Dr. Sassman opined that the work that Mr. Benson performed at Deere was "a substantial factor in the development of his bilateral carpal tunnel syndrome, the need for his surgery, and his ongoing symptoms." Dr. Sassman bolstered her opinion by stating:

> Mr. Benson had to repetitively and forcefully grip and grasp as he performed his job duties . . . . Specifically, he had to repetitively and forcefully grip and grasp tools and parts as he disassembled and repaired assemblies, performed maintenance, adjusted equipment, used hand and power tools, pressed bearing, deburred and buffed parts as well as general maintenance duties of the equipment.

Dr. Sassman continued in opining that these activities placed Mr. Benson at an increased risk for development of compression neuropathy, like carpal tunnel syndrome.

Mr. Benson did not have hand or wrist issues prior to working for Deere. He began experiencing symptoms after working with high and low torque guns and fastening nuts and bolts. Simply from logic, and from Mr. Benson's credible testimony, these activities would involve a combination of force and repetition. Furthermore, I find the opinions of Dr. Sassman more credible than those of Dr. Hunt. I am concerned that Dr. Hunt appears to be a Deere employee. While Dr. Sassman was retained by the claimant, she is an independent physician, and is not an employee of the claimant or claimant's counsel. Additionally, Dr. Sassman's opinions are much more consistent with the pattern of symptoms displayed by the claimant and the claimant's testimony in this matter. Therefore, I conclude that the claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment with Deere.

Temporary Disability

The next question is whether the alleged injury is a cause of temporary disability.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony,

even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

I previously found the opinions of Dr. Sassman more credible with regard to causation of the injury. Considering I found that the claimant's bilateral carpal tunnel syndrome arose out of, and in the course of his employment with Deere, it follows that the claimant's temporary disability resulting from surgery to relieve his carpal tunnel syndrome is caused by the work-related injuries. The parties previously stipulated that, if the work-related injuries caused temporary disability, the claimant would be entitled to temporary disability and/or healing period benefits from March 19, 2019, to April 21, 2019, and July 16, 2019, to August 4, 2019.

Permanent Disability

The parties dispute whether the injuries sustained by the claimant caused a permanent disability, what the extent of that disability may be, and the proper commencement date for permanent partial disability benefits, should any be awarded.

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

Neither Ms. Addison, nor Dr. Hunt agreed that Mr. Benson sustained permanent disability or impairment as a result of his work-related carpal tunnel syndrome. Prior to releasing Mr. Benson to return to full duty after his right wrist surgery, Ms. Addison performed a brief examination wherein she tested hand extension and Mr. Benson's ability to make a fist. Based upon this brief examination, Ms. Addison concluded that Mr. Benson suffered no permanent impairment. Dr. Cloos did not opine as to whether

or not the work injury caused a permanent impairment. Dr. Sassman concluded that the claimant did sustain a permanent impairment caused by his work injury.

Again, I find the opinions of Dr. Sassman more credible than those of Ms. Addison and Dr. Hunt. Dr. Sassman is board certified in occupational and environmental medicine, and is a master certified independent medical examiner. Dr. Sassman performed an in-depth examination of Mr. Benson. Ms. Addison, a nurse practitioner, performed what appears to be from the records, a limited examination of Mr. Benson upon his attempt to return to work.

The next question is the extent of permanent disability. Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of aftereffects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008).

In this case, the claimant suffered a permanent impairment to his bilateral upper extremities. Benefits for permanent partial disability of two scheduled members caused by a single accident is a scheduled benefit under Iowa Code 85.34(2)(t). The degree of disability is computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. Delong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

I previously concluded that the claimant's bilateral carpal tunnel injuries arose out of, and in the course of his employment with Deere. I further concluded that these caused a permanent disability. Ms. Addison concluded that the claimant suffered no permanent disability. Dr. Hunt concluded that the claimant's work at Deere was not a cause of disability. The only provider that opined as to the extent of Mr. Benson's permanent impairment was Dr. Sassman.

Dr. Sassman provided an in-depth discussion of her impairment rating and its basis in the AMA Guides to the Evaluation of Impairment, Fifth Edition. She utilized Table 16-10 to opine that Mr. Benson had a Grade 5 impairment with a zero percent

sensory deficit. He also had a Category 4 motor strength deficit pursuant to Table 16-11 with a 25 percent motor deficit. According to Dr. Sassman, this is then multiplied by the maximum percentage of upper extremity motor deficit of the median nerve in Table 16-15, which equals a 10 percent upper extremity impairment. Dr. Sassman continued in noting that 10 percent x 25 percent is 2.5 percent which is rounded up to a 3 percent upper extremity impairment. This converted to a 2 percent whole person impairment rating. Based upon her examination of the claimant, Dr. Sassman came to the same conclusions with regard to the left upper extremity. She concluded by using the Combined Values Chart on page 604 of the Guides to assign Mr. Benson a 4 percent whole person impairment rating.

Mr. Benson testified to continued weakness in his hands. He indicated that he now uses tools to move sheet metal at work. He also has difficulty opening jars and shoveling snow at home. This is consistent with a loss of strength, and boosts the opinions of Dr. Sassman despite the fact that Mr. Benson was returned to work without restrictions by Dr. Cloos.

Based upon my review of the record, and the Combined Values Chart on page 604 of the Guides, I agree that a 2 percent whole person impairment to each upper extremity combines to a 4 percent whole person impairment. Four percent of 500 weeks is 20 weeks (.04 x 500 weeks = 20 weeks). Claimant is entitled to 20 weeks of benefits for the permanent disability at the stipulated rate.

The parties dispute the commencement date for permanent partial disability benefits. Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until: (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., March 20, 2020). The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

A form included in the exhibits indicated that Mr. Benson had a return-to-work evaluation on August 5, 2019, at which time he was cleared to return to work with Deere. On August 14, 2019, Ms. Addison signed a form indicating that Mr. Benson achieved “MMI w/ no impairment.” Dr. Sassman opined that Mr. Benson achieved MMI on July 16, 2020. Based upon the information in the record, it appears that Mr. Benson returned to work on August 5, 2019. Thus, permanent partial disability benefits should commence on that date pursuant to Iowa Code section 85.34(1), as the claimant returned to work.

Medical Expenses and Mileage

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

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

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

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

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Vieth Construction Corp., File No 5044430 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial.

Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

I previously found that the claimant's bilateral carpal tunnel syndrome arose out of, and in the course of his employment with Deere. As such, Deere is responsible for medical care related to those injuries. The only disputes regarding the medical expenses were as to causal connection and authorization. Based upon my review of the record, the unauthorized care was reasonable and beneficial considering the diagnoses and subsequent surgeries by Dr. Cloos. Further, Deere abandoned care after denying liability for the injuries. Therefore, the treatment of Dr. Cloos provided a more favorable medical outcome than would have been achieved by no care. Deere shall reimburse the claimant for the disputed medical care in Claimant's Exhibit 1.

Additionally, the claimant is entitled to compensation for medical mileage. Mr. Benson submitted a mileage statement as Claimant's Exhibit 3:10. Mr. Benson's address was discussed during the proceeding. First, I reviewed the medical records in evidence to confirm that the claimant had a medical appointment on the claimed date. I did not find corresponding appointments for the following dates: November 29, 2018, January 2, 2019, and July 10, 2019. Considering there is no record of these visits in evidence, I decline to award mileage for those dates. Second, I confirmed via Google Maps that the amount of mileage claimed is correct. It appears that the claimant may have rounded their mileage down by one tenth of one mile in a few situations. I award the claimant two hundred fifty-eight and 34/100 dollars ($258.34) for medical mileage. This includes reimbursement for mileage incurred for the claimant's IME with Dr. Sassman.

IME Reimbursement

The claimant requests reimbursement for the IME of Dr. Sassman pursuant to Iowa Code section 85.39. The defendant argues that the undersigned previously declined to award reimbursement for the IME pursuant to Iowa Code section 85.39, and instead any costs should be awarded pursuant to Iowa Code section 85.40.

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

An employer is not liable for the cost of an independent medical exam for an injury that is determined to not be a compensable injury. Id. A reasonable fee for an independent medical examination made pursuant to Iowa Code 85.39(2) is based on the typical fee

charged by a medical provider to perform an impairment rating in the local area where the exam is conducted. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

In an order dated August 3, 2021, the undersigned denied the claimant's petition requesting reimbursement by for Dr. Sassman's IME. I noted that Dr. Hunt did not issue a permanent impairment rating and that the rating was a denial of liability. Since that time, the Iowa Court of Appeals provided clarification as to the application of Iowa Code section 85.39. The court of appeals indicated that a doctor finding a lack of causation can be "tantamount to a zero percent impairment rating." Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021). In this matter, Dr. Hunt opined that Mr. Benson's injuries were not caused by his employment with Deere. Dr. Sassman subsequently provided an evaluation on causation and permanent impairment. Based upon this new decision of the court of appeals, and the above findings, it is appropriate to award the costs of the IME pursuant to Iowa Code section 85.39. Therefore, the defendant shall reimburse the claimant three thousand four hundred sixty-five and 00/100 dollars ($3,465.00) for the IME performed by Dr. Sassman.

Penalty

Iowa Code 86.13(4) provides the basis for awarding penalties against an employer. Iowa Code 86.13(4)(a) states:

> (a) If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> (b) The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
>
> (2) The employer has failed to provide a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
>
> (c) In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, Iowa Code 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229 (Iowa 1996). Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is also not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001). An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If an employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50-percent of the amount unreasonably delayed or denied. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include: the length of the delay, the number of delays, the information available to the employer, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

For purposes of determining whether an employer has delayed in making payments, payments are considered "made" either (a) when the check addressed to a claimant is mailed, or (b) when the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235-236; Kiesecker, 528 N.W.2d at 112).

Penalty is not imposed for delayed interest payments. Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008); Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa 1999).

The claimant suggests that imposition of a penalty is appropriate due to Dr. Hunt's opinion being "incredibly thin and not tailored to Claimant's [*sic*] history nor Claimant's specific complaints." The claimant also argues that Dr. Hunt's opinion was used to "completely abandon care for the remainder of the case."

While I determined that the claimant suffered bilateral upper extremity injuries that arose out of, and in the course of his employment with Deere that resulted in temporary and permanent disability, imposition of a penalty is not appropriate in this matter. The defendant had a medical opinion and safety report upon which they based their denial at the time. Viable arguments exist in favor of each party in this matter. I decline to impose a penalty in this matter.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 2. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

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

In this matter, the claimant seeks an award of costs for the one hundred and 00/100 dollar ($100.00) filing fee. In my discretion, I award the claimant one hundred and 00/100 dollars ($100.00) for costs incurred for the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant is awarded healing period benefits from March 19, 2019, to April 21, 2019, and July 16, 2019, to August 4, 2019, at the stipulated rate of six hundred two and 73/100 dollars ($602.73).

That the defendant shall pay the claimant twenty (20) weeks of permanent partial disability benefits at the agreed upon rate of six hundred two and 73/100 dollars ($602.73) per week commencing on August 5, 2019.

That the defendant are entitled to a credit of three thousand four hundred eighty-six and 58/100 dollars ($3,486.58) as stipulated.

That the defendant shall reimburse the claimant for medical expenses as provided in Claimant's Exhibit 1.

That the defendant shall reimburse the claimant two hundred fifty-eight and 34/100 dollars ($258.34) for medical mileage incurred.

That the defendant shall reimburse the claimant three thousand four hundred sixty-five and 00/100 dollars ($3,465.00) for the costs of the IME performed by Robin Sassman, M.D.

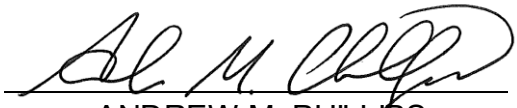
That there is no imposition of a penalty.

That the defendant shall reimburse the claimant one hundred and 00/100 dollars ($100.00) for costs.

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

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

Signed and filed this 30th day of December, 2021.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Dirk Hamel (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.