

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTINA I. YAROLEM,

Claimant,

vs.

JOHN DEERE DUBUQUE WORKS,

Employer,
Self-Insured,
Defendant.

File No. 5043487

ARBITRATION

DECISION

Head Note Nos.: 1803, 3001,
1108.50, 1402.50

STATEMENT OF THE CASE

Christina Yarolem, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Dubuque Works, self-insured employer. Hearing was held on March 18, 2015, in Des Moines, Iowa.

Stanley Rodamaker, Christina Yarolem, and Matthew Yarolem all testified live at trial. The evidentiary record also includes claimant's exhibits 1-20 and defendant's exhibits A-U. The parties submitted three hearing reports at the commencement of the evidentiary hearing. On the hearing reports, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs, which were received by the agency on April 22, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained injury to her neck as a result of the March 14, 2012 work injury.
2. If claimant did sustain injury to her neck as a result of the March 14, 2012 injury is her neck claim barred by operation of Iowa Code section 85.26?
3. The extent of any permanent disability, if any, claimant sustained as a result of the March 14, 2012 work injury.
4. The appropriate weekly workers' compensation rate.

5. Whether claimant is entitled to payment of medical expenses.
6. Whether claimant is entitled to an independent medical examination.
7. Assessment of costs.

FINDINGS OF FACT

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

Ms. Yarolem alleges injury to her neck, right shoulder, right upper extremity, and mental health-depression while performing her job duties at John Deere Dubuque Works (hereinafter "John Deere") on March 14, 2012. Defendant has accepted the right shoulder and right upper extremity injuries and has paid healing period, temporary partial disability, and has begun to pay permanent partial disability benefits. Defendant has also accepted claimant's depression claim, but dispute that claimant is entitled to a running award as a result of the depression. Defendant has denied that claimant's neck claim is related to her work and further asserts that her claim is untimely and barred by operation of Iowa Code section 85.26.

Ms. Yarolem began working at John Deere in February of 2004 as an assembler. She "put parts on the major equipment." Her job required the use of a lot of power tools. She was required to push and pull large carts and perform heavy lifting. She also testified that assembling hoses required a lot of torque; she was sometimes required to assemble 150 to 200 hoses a day. She would work 8 to 12 hours per day. Ms. Yarolem considered this to be very repetitious work. She was working as an assembler on March 14, 2012. (Testimony; Exhibit 15)

Ms. Yarolem testified that she first began to experience problems with her right arm and shoulder in March of 2012. She had a lot of numbness, tingling, pain, achiness, and swelling in her hands, right forearm, right shoulder, up into her neck and down the other side. She believed these symptoms were due to her new job of assembling hoses and tubes to nuts. This job required her to torque them down and "a lot of assembly work" was also required. (Testimony) Ms. Yarolem testified that the torques were more difficult than her prior job. This job resulted in a lot of strain; it was harder and faster-paced work, and the job required her to be in an awkward position. She began this job at the beginning of March 2012.

Ms. Yarolem was seen at the John Deere Clinic on March 14, 2012. She reported discomfort in her forearms, hands, and right shoulder. The notes from the clinic indicate she performs "lots of gripping & thrusting." The impression at that time was bilateral carpal tunnel syndrome and right biceps tendonitis. (Ex. 1, p. 1) Ms. Yarolem returned to the clinic on March 16, 2012. She reported that her arms felt somewhat better, but her right shoulder was very painful. The handwritten notes are difficult to read, but it appears she was given some restrictions. (Ex. 1, p. 1)

On April 5, 2012, Ms. Yarolem underwent EMG and nerve conduction studies at Medical Associates Clinic. The findings were consistent with mild right median nerve entrapment at the wrist and a mild denervating process within the left C8-T1 root-plexus distribution. (Ex. 2, p. 1-2; Ex. B)

On May 24, 2012, John Deere Occupational Health Services referred Ms. Yarolem to David Field, M.D. for right carpal tunnel symptoms and concerns about left upper extremity symptoms. (Ex. 1, p. 2) Ms. Yarolem saw Dr. Field on June 5, 2012. She reported pain in the area of her right elbow and left wrist and some right-sided neck discomfort and shoulder discomfort. Dr. Field felt sorting out her hand and arm complaints would be best to do before diving into all of her other shoulder and neck complaints. He recommended an MRI of her right elbow. (Ex. A, p. 1) The MRI was performed on June 7, 2012 and showed a high probability of a partial tear to the distal biceps. (Ex. A, p. 13)

On June 29, 2012, Dr. Field performed an "Open exploration of distal biceps and restoration of biceps tendon back to bone with Mitek anchor Super type x2." (Ex. A, p. 16) Following surgery Ms. Yarolem continued to follow up with Dr. Field. (Ex. A)

On July 23, 2012, Ms. Yarolem went to the Maquoketa Family Clinic. She reported she still had pain in her left shoulder. She said that she had a nerve conduction test which showed a possibility of nerve compression in the C8-T1 area. Evidently, she asked Dr. Luc at John Deere for further evaluation, but he refused. Kimberly Deppe, ARNP felt another MRI of the cervical and thoracic spine was necessary. (Ex. 4, pp. 3-4) Due to left upper extremity numbness and weakness a thoracic MRI was carried out on July 30, 2012. This revealed endplate degenerative changes in her mid-thoracic spine. (Ex. 6, p. 1) A cervical MRI revealed multilevel degenerative disc disease. (Ex. 5, p. 2; Ex. J, p. 94)

On August 29, 2012, Ms. Yarolem reported for physical therapy at Dubuque Physical Therapy. Since surgery she had not used her arm a lot. She reported having shoulder pain even before the surgery and numbness and tingling in the 4th and 5th digits, which had progressed to the 2nd and 3rd digits in her bilateral hands, right greater than left. (Ex. 7, pp. 1-2)

On September 11, 2012, Ms. Yarolem was seen by Dr. Field. At that time she was two-and-a-half months post-biceps repair. Dr. Field was pleased with her progress. (Ex. 5, p. 1) She saw him again at the beginning of October and seemed to be doing well. Dr. Field felt she was able to return to work. Dr. Field noted she did have some symptoms suggestive of ulnar nerve on the right. (Ex. A, p. 4) By the end of October she had returned to restricted work and was still doing well. Her shoulder had good range of motion. Dr. Field noted she was having ongoing problems with her neck and some numbness in her fifth fingers. (Ex. A, p. 4)

Ms. Yarolem returned to Dr. Field on December 11, 2012, reporting some numbness in her right hand. She advised the doctor that she did use her hand

repeatedly at work. Dr. Field was not able to explain the source of her ulnar nerve symptoms. He recommended repeat nerve studies. (Ex. A, p. 5)

Dr. Field's February 5, 2013 note indicates that Ms. Yarolem had right shoulder pain "which may not be related to work." (Ex. A, p. 5) He discussed the situation with her and the fact that John Deere might not cover her shoulder treatment. He injected her shoulder. Id.

On February 25, 2013, Ms. Yarolem returned to see Dr. Field. He noted that her cervical MRI studies did not correlate with her arm symptoms on the right side. He was not able to delineate the source of her pain. He wanted clarification from John Deere on what they wanted in terms of evaluation. (Ex. A, p. 6)

In March of 2013 claimant returned to the John Deere Clinic with reports of altered sensation in the 4th and 5th digits of her right hand. During the spring and early summer months she continued to report pain and numbness in her right upper extremity and shoulder. In April she also reported some symptoms in the right side of her neck. Additionally, she reported that sometime prior to March 2012 her job had changed and she had to use a torque wrench with 175 N/M force. (Ex. 1, pp. 4-5) Additional studies were recommended. (Ex. A, p. 7)

Ms. Yarolem was seen by neurosurgeon, David H. Segal, M.D. on May 2, 2013, with the primary concern of neck and arm pain. She reported a gradual onset since March of 2012. The moderate to severe, persistent pain was in her posterior neck and lateral neck bilaterally. There is notation of torque injury at work. The note indicates she no longer used her right hand much due to weakness. She also reported low back pain. Dr. Segal's impression was intervertebral cervical disc disorder with myelopathy in the cervical region, cervical spondylosis without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, and displacement of lumbar intervertebral disc without myelopathy. Dr. Segal informed the patient that the C5-C6 was the most suspicious for causing her symptoms. He felt at least some of her pain could be from her right shoulder injury. He recommended she try injections before considering any surgery. He referred her to Timothy Miller, M.D. for cervical and lumbar epidural steroid and/or facet injections. He also ordered a cervical and lumbar MRI. (Ex. 8, pp. 2-3)

A May 6, 2013 MRI of the cervical spine showed mild to moderate broad-based disk bulging at C5-6 with marked right-sided neural foraminal narrowing; mild broad-based disk bulging at C4-5 with slight right neural foraminal narrowing; and minimal cerebellar tonsillar ectopia. (Ex. C)

A May 20, 2013 MRI of the right shoulder showed evidence of tendinosis in the distal attachment of the rotator cuff and degenerative arthritis of the AC joint. (Ex. A, p. 14) On May 22, 2013 nerve conduction studies and EMG revealed right C-8 and or T1 radiculopathy, and mild to moderate right median nerve entrapment at the right wrist. (Ex. 9) On May 23, 2013 Dr. Field recommended a right shoulder scope with

subacromial decompression and AC joint resection. He also recommended a right carpal tunnel release be performed at the same time. (Ex. 5, p. 2)

On May 31, 2013 Ms. Yarolem was seen at the Maquoketa Family Clinic, P.C. by Nurse Practitioner Deppe. She reported pain in her arms, back, and neck. She was seeing Dr. Field but at that time was waiting for her employer to make some decisions. (Ex. 4, pp. 11-12)

On July 25, 2013 Dr. Field performed right open carpal tunnel release and diagnostic arthroscopy, arthroscopic subacromial decompression and biceps tenodesis on her right shoulder. (Ex. 3, pp. 8-9; Ex. A, p. 17) Dr. Field saw Ms. Yarolem for followup on August 6, 2013. At that time he felt she was doing well. She was using hydrocodone and Advil for pain. (Ex. 5, p. 3)

Dr. Field initiated physical therapy for her shoulder in early September 2013. (Ex. A, p. 8) By late September the therapy did not seem to be working so Dr. Field recommended a more vigorous therapy. (Ex. A, p. 8) By October she still had made very little progress. Dr. Field gave her a shoulder injection and recommended a change in therapists. (Ex. A, p. 9) By mid-November Ms. Yarolem was experiencing some improvement. (Ex. A, p. 10)

Ms. Yarolem was seen at the Maquoketa Family Clinic on October 23, 2013 feeling lightheaded, off balance, imbalance, and had right facial pain that started yesterday. She also complained of headache with a sudden onset over the last couple days. An appointment was made for her to see a neurologist the next day. (Ex. J, pp. 100-01)

On November 1, 2013 Ms. Yarolem was seen at her Maquoketa Family Clinic with right anterior neck pain, onset three days ago with no known injury. She was encouraged to follow up with a spine surgeon. (Ex. J, pp. 102-03)

On December 3, 2013 Ms. Yarolem was seen at the Maquoketa Family Clinic with "a 1 ½ page list of concerns about condition and inability to function to full capacity." (Ex 4, p. 13) Her concerns included her right hand, arm and shoulder, and headaches. The assessment at that time was right shoulder adhesive capsulitis and impingement. A message was sent to Dr. Field to inquire about an EMG or MRI. (Ex. 4, p. 13)

Dr. Field saw Ms. Yarolem again on January 14, 2014. At that time he noted he was not pleased with her progress relative to her arm and shoulder. He considered her to be way behind what he would normally expect. Some consideration was given to a diagnostic scope for scar tissue removal and gentle manipulation, but Dr. Field felt that was not necessary quite yet. With regard to her upper extremity complaints he felt an MRI could be done. The note indicates that he did not think her upper extremity complaints were work related specifically. (Ex. A, p. 11)

On January 27, 2014 Ms. Yarolem returned to the Maquoketa Family Clinic. She reported fatigue, anxiety, and insomnia. She advised that she previously received B12 injections that helped with her fatigue. She was started on Lexapro because it was felt there was underlying depression. (Ex. J, pp. 104-06) Her B12 levels were checked and found to be normal. (Ex. J, p. 107)

On January 30, 2014, Ms. Yarolem underwent a cervical spine MRI. The MRI demonstrated some slight disk bulging and spinal stenosis. The degree of stenosis was most significant at C6-7. (Ex. A, p. 15)

The John Deere Occupational Health Medical Director wrote to Dr. Field on February 12, 2014 asking her to "send our office a letter concerning the causation of Christina Yarolem's cervical spinal stenosis and your recommendations for further therapy." (Ex. A, p. 22) On that same letter Dr. Field hand-wrote his response. His response is difficult to decipher but it appears to state: "Her cervical spine conditions is [sic] degenerative in nature. [illegible] cervical spondylosis And Not related to her work for [illegible]. She should seek [illegible] from a neurosurgeon." (Ex. A, p. 22)

On February 25, 2014 Dr. Field sent a letter to Ms. Yarolem. He advised that he had reviewed her prior and recent MRIs. He noted the recent MRI showed arthritis, but it appeared unchanged since the July 2012 study. He felt her conditions would be better treated by a neurosurgeon. The letter also discloses that he sent a letter to John Deere advising that he thought this was a condition that accumulated with time and that he really could not relate this to her work, "per se." (Ex. A, p. 24)

On March 5, 2014, Ms. Yarolem returned to Maquoketa Family Clinic. She complained of right shoulder soreness. She wanted a work excuse for not going into work. Alyssa Brobst, PA-C explained to Ms. Yarolem that she "could not continue using the clinic as an excuse to not go to work unless there was a medical condition that warranted staying home. Today I do think she could have gone to work and completed her necessary duties safely and without further injury to herself, despite the fact that she felt soreness." She went on to explain that if the employer were to call and question these notes she would have to tell them that it "was not medically necessary that she stay home." She also explained to the patient that future notes would only be written if medically necessary. (Ex. J, p. 108-09)

On March 10, 2014 Dr. Field sent a letter to defense counsel. With regard to the biceps repair Dr. Field assigned 5 percent upper extremity impairment due to the nature of that specific injury. He did not feel any specific restrictions were necessary. For the right carpal tunnel surgery he assigned 3 percent upper extremity impairment. Again, he did not feel any restrictions were required. Regarding her cervical spine problems Dr. Field stated that her "spinal stenosis and arthritis couldn't really be related to work, specifically." For Ms. Yarolem's right shoulder Dr. Field did not feel it was appropriate to rate the shoulder at that time because she had not reached a level of medical healing. (Ex. A, pp. 25-27)

On March 24, 2014 Dr. Field sent another letter to defense counsel. He indicated he had not seen the patient since January 14, 2014. At that time they recommended a maximum 20-pound lifting restriction for her shoulder. (Ex. A, p. 29)

Ms. Yarolem returned to see Dr. Field on April 15, 2014. At that time she was still having difficulty with her right shoulder. She was also experiencing triggering of her right thumb and shaking of her right hand. Dr. Field felt there was evidence of some early spurring of the inferior portion of the glenoid. Ms. Yarolem was not satisfied with the outcome of her shoulder and wanted some additional testing. Dr. Field indicated that he would need to discuss further testing with John Deere. (Ex. A, p. 12)

Ms. Yarolem returned to the Maquoketa Family Clinic on April 9, 2014 to talk about depression. Her right shoulder was a big concern for her. She was assessed with major depressive affective disorder recurrent. Her medication was adjusted. (Ex. 4, pp. 14-15)

On May 1, 2014, Ms. Yarolem returned to Dr. Segal with continued complaints of neck pain. She had not seen Dr. Segal since May 1, 2013. Since that time she had rotator cuff surgery; she reported that the shoulder surgery made her neck pain worse. She also reported that her job duties required a lot of heavy lifting including lifting large, unwieldy objects, pulling and pushing heavy objects, using heavy and or vibrating equipment at shoulder level and above including repetitious motions. Dr. Segal felt her symptoms seemed to be related to a repetitious work injury. He requested the cervical spine images. He felt surgical intervention was likely the best option for her neck, but he wanted to wait until after he saw the films to make a final determination. (Ex. 8, pp. 4-8) There is no indication in the record that any additional MRI took place.

Ms. Yarolem was seen for a second opinion at the University of Iowa Hospitals and Clinics (UIHC) by James V. Nepola, M.D. on May 13, 2014. Her chief complaint was right shoulder pain. She reported that she sustained a work-related injury on March 14, 2012 while turning a wrench. Dr. Nepola noted her treatment history. He also noted other physicians' frustration with her lack of active motion. Dr. Nepola ordered an MRI arthrogram of her shoulder. (Ex. 10, pp. 1-4; Ex. D, pp. 45-48) Ms. Yarolem returned to see Dr. Nepola who noted that the MRI revealed "mild to moderate supraspinatus tendinopathy. Chronic blunting and irregularity of the anterior labrum." (Ex. D, p. 51) He referred the patient to Dr. Aschenbrenner for an injection. Dr. Nepola recommended light duty restrictions for Ms. Yarolem. (Ex. D, pp. 51-53)

On June 20, 2014, claimant's counsel wrote to Dr. Segal summarizing the conversation he had with Dr. Segal on the prior day. On June 30, 2014, Dr. Segal signed the letter and indicated that the letter correctly summarized the conversation. According to this exhibit, Dr. Segal's May 2, 2013 note incorrectly stated that the onset was gradual without injury. Evidently this is the default entry, and the note actually should have said "Onset: work injury March 2012." (Ex. 8, p. 7) Also, Dr. Segal indicated it is his opinion that Ms. Yarolem's neck condition was caused by her repetitive job duties at John Deere. He felt it was a work-related injury based upon her

repetitive work activities and because she first started experiencing pain in her neck while performing her work duties in March of 2012. (Ex. 8, pp. 7-8)

On August 12, 2014, Ms. Yarolem returned to Dr. Nepola. The notes indicate she was returning after a glenohumeral injection under ultrasound. She reported her motion was much better, but she was still having pain in her right shoulder. At that time she was performing desk work only. (Ex. D, pp. 54-57)

In September of 2014, Ms. Yarolem again followed up at the UIHC and underwent another injection. (Ex. 10, pp. 5-7) On October 7, 2014, she returned to Dr. Nepola's office. She reported that she had a problem at physical therapy. At her 3rd appointment she felt she was pushed past her pain limit with range of motion exercises and now has increased pain. She also reported getting headaches. Dr. Nepola recommended another injection and continued restrictions. (Ex. D, pp. 58-61)

In October of 2014 Ms. Yarolem reported to the John Deere Clinic that she had been depressed since her last physical therapy session. She disclosed that she had experienced a similar problem in the past. She attributed her recent depression partially to the weight she has gained since her injury. (Ex. 1, p. 17)

She was seen on November 4, 2014 at the UIHC for her right shoulder pain. The note indicates she had undergone multiple injections, and each injection only provided about one day of relief; there was no lasting benefit. The UIHC felt that the physical therapy was helping and recommended additional therapy. (Ex. 10, pp. 9-10)

On December 16, 2014 she returned to the UIHC for another follow-up with Dr. Nepola. She reported improvement in her right shoulder range of motion but increased pain. An injection was performed to see if there would be any potential benefit from removing a right bicep tendon sheath screw. Dr. Nepola continued to restrict Ms. Yarolem's activities. (Ex. D, pp. 62-65)

Ms. Yarolem was involved in a single car accident on January 9, 2015. According to the police report she was headed north on Highway 61 when she lost control on an icy bridge, went into the ditch, hit a utility pole, and went through a fence. (Ex. K, pp. 119-20) During the accident she went airborne, down a ditch, and broke off a telephone pole. She was diagnosed with a contusion of the chest wall, back sprain, and contusion on her knees. (Ex. K, pp. 121-130) On January 13, 2015 Ms. Yarolem was seen at Maquoketa Family Clinic for followup on the motor vehicle accident. She reported back pain and pain in her right chest anteriorly. She was supposed to return to work, but she did not feel able to return yet. (Ex. J, pp. 115-16; Ex. K, pp. 131-32)

On January 27, 2015, Dr. Nepola saw Ms. Yarolem again. He noted that she did not have a clinically significant response to diagnostic injections or physical therapy. Dr. Nepola did not feel that surgery would reliably change her shoulder pain. He released Ms. Yarolem to return to work with restrictions for her right shoulder. She was restricted to no reaching or lifting overhead with her right upper extremity. No gripping

with right upper extremity. He also recommended an FCE to determine her permanent restrictions. (Ex. 10, p. 11; Ex. D, pp. 66-71)

Ms. Yarolem returned to Maquoketa Family Clinic on February 5, 2015 with feelings of anxiety/depression. She reported that she would be going to court for her workers' compensation injury and had recently met with her attorney. She also reported daily headaches for at least the last five to six weeks. She admitted to similar symptoms in the past. She was given prescriptions for her anxiety and headaches. (Ex. J, pp. 117-18)

On February 12, 2015 Ms. Yarolem underwent a physical capacity evaluation. The results indicated valid effort with regard to her left shoulder and knees but invalid efforts for her right shoulder and trunk testing. Due to inconsistent effort and lack of effort with her right shoulder and trunk testing the therapist was not able to recommend any particular physical requirements or restrictions. (Ex. N)

On February 16, 2015 Robert W. Milas, M.D. sent a letter to claimant's counsel. Dr. Milas reviewed Ms. Yarolem's records and examined her at his office. Dr. Milas' impression was Ms. Yarolem had cervical radiculopathy, right carpal tunnel syndrome, and right shoulder derangement. Dr. Milas opined that the March 14, 2012 work event was the direct cause of her "condition of being ill." (Ex. 11, p. 2) He noted she had a problem with depression following the work event, and he felt this was associated with the work injury. He stated that the motor vehicle accident Ms. Yarolem was involved in on January 9, 2015 "did not appreciably change her cervical injury or injury to the right upper extremity." Id. Dr. Milas felt that Ms. Yarolem most properly fit into the DRE Cervical Category III and had 18 percent permanent impairment of the whole person. He did not believe she sustained any permanent impairment as a result of the mild right carpal tunnel entrapment. He felt the right shoulder derangement resulted in 18 percent permanent impairment to her whole body. (Ex. 11, pp. 1-2) It does not appear that Dr. Milas had the benefit of reviewing the FCE which was performed on February 12, 2015.

On March 17, 2015 Dr. Nepola sent a letter to John Deere. He stated that Ms. Yarolem was at maximum medical improvement on January 27, 2015. He assigned seven percent of the whole person impairment for her right shoulder injury. He noted that the FCE was an invalid assessment of Ms. Yarolem's functional ability. Because the assessment was invalid he was not able to determine what, if any, permanent restrictions were needed. He noted that future treatment for her injury could include non-steroidal anti-inflammatory medications, periodic corticosteroid injections, and physical therapy. (Ex. T)

The first issue to be addressed is whether Ms. Yarolem sustained an injury to her neck as a result of the March 14, 2012 work injury. There are several doctors who have issued opinions regarding Ms. Yarolem's neck condition.

Dr. Field is an orthopedic surgeon. As noted above, he treated Ms. Yarolem over a long period of time. In February of 2014 Dr. Field stated that her cervical spine conditions were degenerative in nature and "not related to her work per se." (Ex. A, p. 22) Unfortunately, Dr. Field has never addressed whether her work at John Deere did or did not aggravate her condition. Dr. Field recommended that she seek an opinion from a neurosurgeon. (Ex. A, pp. 22, 24-26)

Dr. Segal is a neurosurgeon who has seen Ms. Yarolem on several occasions. In June of 2014 Dr. Segal diagnosed Ms. Yarolem with right cervical radiculopathy, disk herniation at C5-C6 and C6-C7, worse at C5-C6. He recommended an anterior cervical discectomy with fusion and plate C6-C7 and C5-C6, but wanted to review the cervical MRI from January 30, 2014 before he made a final recommendation. Dr. Segal opined that her neck condition was caused by her repetitive job duties at John Deere. (Ex. 8, pp. 7-8)

At the request of her attorney Ms. Yarolem was seen by Dr. Milas on February 16, 2015 for purposes of an independent medical examination. With regard to her neck Dr. Milas' impression was cervical radiculopathy. It was Dr. Milas' opinion that the work-related event on March 14, 2012 was the "direct cause of her condition of being ill." (Ex. 11, p. 2)

Ms. Yarolem testified that her neck problems began in March of 2012 while working at John Deere. The evidence does not demonstrate that she had any neck problems prior to her employment with John Deere. Both Dr. Segal and Dr. Milas relate her neck condition to her work at John Deere. Although Dr. Field stated that the work "per se" has not caused her neck condition he did not address whether the work aggravated her neck condition. Furthermore, Dr. Segal is a neurosurgeon and therefore, uniquely qualified to address spine conditions. For these reasons I find that Ms. Yarolem has shown by a preponderance of the evidence that her current neck conditions are related to her March 14, 2012 work injury for John Deere.

Although Dr. Segal causally relates Ms. Yarolem's neck condition to her work for John Deere he does not provide an opinion regarding impairment or restrictions. Dr. Milas opined that she fit into the DRE Cervical Category III and thus sustained 18 percent impairment of the whole person. Dr. Field did not address permanent impairment or restrictions for Ms. Yarolem's neck conditions. Neither Dr. Segal nor Dr. Milas addressed the issue of restrictions. Therefore, I find the claimant has failed to show that she has any permanent restrictions placed on her activities as a result of the work injury to her neck. Defendant argues that Dr. Milas' impairment rating is flawed. However, his opinion is the only expert opinion on the issue of permanent impairment for Ms. Yarolem's neck. Therefore, I find Ms. Yarolem sustained 18 percent permanent impairment to her body as a whole as a result of the work injury to her neck.

Defendant further argues that even if claimant did sustain an injury to her neck her claim is barred by the statute of limitations. On March 26, 2013, Ms. Yarolem filed an Original Notice and Petition alleging injury to her right shoulder, right upper

extremity, left shoulder, and left upper extremity as the result of a work injury on March 14, 2012. On April 4, 2014 Ms. Yarolem filed her first amended petition which also alleged injury to her neck and back. On April 14, 2014 defendant filed an Answer to the Amended Petition. On April 21, 2014 a ruling on claimant's motion to amend was issued; the ruling allowed the amendment. On September 22, 2014 defendant amended its answer to the first amended petition and asserted that the neck and back claims were barred as untimely pursuant to Iowa Code section 85.26. On February 13, 2015 claimant filed a second amended petition, which added a mental health/depression claim to the case. On March 6, 2015 the motion was granted.

Defendant argues that claimant's first petition did not allege injury to her back or neck. Defendant points out that it was not until an amended petition was filed on April 1, 2014 that she alleged injury to her back or neck. It is defendant's position that because claimant's alleged neck injury occurred on March 14, 2012 and because no weekly benefits were paid for the neck, the statute of limitations would have run on March 14, 2014. (Def. Brief p. 3) Therefore, it is defendant's position that the neck claim is barred by the statute of limitations. Unfortunately, defendant does not cite any legal authority to support its position. In the present case the alleged date of injury is March 14, 2012. The Original Notice and Petition in this matter was filed on March 26, 2013. The petition was filed within two years of the date of the alleged injury. Therefore, I find the petition was filed in a timely manner and claimant's claim is not barred by the statute of limitations.

It is noted that John Deere argues claimant's "metal detecting hobby also could have contributed to both her accepted and contested claims." (Def. Brief p. 2) There is no evidence that any medical provider and/or expert in this matter supports this defense theory. Therefore, I do not find this argument to be persuasive.

Ms. Yarolem is asserting that she has sustained industrial disability as a result of her work injury with John Deere. In support of her contention she points out that she began working for John Deere in February of 2004 and was able to perform all of her duties as an assembler without any problems until the time of her injury. For the past three years she has been working light duty at John Deere. At the time of hearing she was making labels for 5S audits. She attempted to return to full-duty work in the fall of 2012, but she was physically unable to perform the work. (Testimony) She went back to light-duty work pursuant to the restrictions set forth by Dr. Nepola on January 27, 2015. Those restrictions are no reaching or lifting overhead with her right upper extremity. No gripping with her right upper extremity. (Ex. 10, p. 11; Tr. Pp. 49-50) Claimant testified she would like to improve her condition so she may find a permanent position at John Deere. However, she does not believe she could go back to performing the work of an assembler because there is too much heavy lifting and the torques are very hard and require awkward positioning of her hand. (Testimony)

Ms. Yarolem is still experiencing problems with her neck, right shoulder, and right upper extremity. She has constant pain in her neck, right shoulder, and right biceps. She also testified that she has a loss of movement in her neck and right shoulder. She

cannot engage in some of her favorite activities such as metal detecting, bowling, and playing with her grandchildren. Her symptoms also interfere with her sleep. (Testimony)

Ms. Yarolem's son, Matthew, testified at the hearing. He has lived in the same town as his mother his entire life. Matthew also works at John Deere and sees his mom every single day. According to him his mother did not have any problems with her neck, right shoulder or right biceps prior to March 14, 2012. However after that date he has noticed that she was having pain and swelling in her right shoulder and arm. He has also noticed that she has had stiffness in her neck. He also testified that she does not have the same range of motion in her right shoulder or neck as she did prior to the injury. (Testimony)

Permanent disability and restrictions which result from the work injury are factors used to determine a claimant's entitlement to industrial disability. Defendant has accepted Ms. Yarolem's right shoulder and right upper extremity claims. There are differing opinions regarding the permanency and restrictions for her right upper extremity and shoulder.

Dr. Field provided treatment for Ms. Yarolem's upper extremity and shoulder for an extensive period of time. On March 10, 2014 Dr. Field issued an opinion letter. With regard to the biceps repairs Dr. Field assigned five percent upper extremity impairment. He did not assign any specific restrictions due to her bicep injury. (Ex. A, p. 25-26) For her right carpal tunnel syndrome he assigned three percent impairment of the upper extremity. Again, he did not feel any particular restrictions were necessary. At that time he did not feel she had reached MMI for her right shoulder. (Ex. A, pp. 25-27)

Ms. Yarolem also treated with Dr. Nepola for her shoulder from May of 2014 to the end of January 2015. He performed a detailed range of motion assessment of Ms. Yarolem's shoulder and determined that she sustained seven percent impairment to her body as a whole as a result of the shoulder injury. (Ex T, p. 186) Because Ms. Yarolem's FCE was invalid with regard to her functional ability for her upper extremity Dr. Nepola was unable to determine what, if any, permanent restrictions were necessary. (Ex. T, pp. 186-87) At the time of hearing Ms. Yarolem was scheduled to undergo another FCE on May 5, 2015.

Dr. Milas did not assign any impairment for the right carpal tunnel. For the right shoulder injury he assigned 18 percent impairment of the whole person due to loss of grip strength. He did not address the issue of restrictions. (Ex. 11, p. 2)

With regard to Ms. Yarolem's right upper extremity I find the opinions of Dr. Field to be most credible. Dr. Field saw Ms. Yarolem on numerous occasions and provided extensive treatment. Dr. Field is an orthopedic surgeon. Therefore, I find that as a result of the bicep work injury Ms. Yarolem sustained five percent impairment to her upper extremity. I also find that as a result of her carpal tunnel she sustained three percent right upper extremity impairment. I further find claimant has failed to show by a

preponderance of the evidence that she has any permanent restrictions as a result of her right upper extremity work injury.

With regard to Ms. Yarolem's shoulder I find the opinions of Dr. Nepola to be most persuasive. Dr. Nepola provided extensive treatment to her shoulder and set forth a detailed analysis for his impairment rating. Furthermore, his opinion fits with the medical picture as a whole. Therefore, I find that she sustained seven percent whole person impairment due to the shoulder injury. I further find claimant has failed to show by a preponderance of the evidence that any medical provider has assigned any permanent restrictions as a result of her right shoulder work injury.

John Deere has accepted that Ms. Yarolem's depression claim is related to her work injury. Ms. Yarolem is seeking a running award for her mental health-depression injury. However, the evidence simply does not support such an award. There is no evidence in the record that Ms. Yarolem is unable to work due to her depression.

In further support of her claim for industrial disability claimant points out that at the time of her injury Ms. Yarolem was earning \$19.34 per hour and working 40-55 hours per week. (Ex. 18, p. 1) She also qualified for CIPP as an assembler. At the time of hearing she was earning \$17.56 per hour and did not qualify for CIPP in her current light-duty position. Claimant argues that although she may qualify for other jobs at John Deere and may be able to physically perform them she would not make as much money as she did as an assembler because those jobs do not qualify for CIPP.

Ms. Yarolem is 52 years of age, has a GED and a degree from Stewarts School of Cosmetology. (Ex. 16, p. 2) Prior to working at John Deere she owned and operated a secondhand store, and she also owned and operated a hair salon. She also previously worked as a punch operator, cook/waitress, machine operator, and assembler. She earned wages ranging from minimum to \$10.00 per hour. (Ex. 16, pp. 3-4) Claimant argues that because she now has permanent impairment and possibly permanent restrictions if she were to lose her job at John Deere she would likely earn a lot less money than she did when working for John Deere as an assembler. I find she did not have any permanent restrictions at the time of hearing; however, she does have difficulty performing numerous tasks. Additionally, she attempted to return to her prior position of assembler but was physically unable to perform those duties.

I find that Ms. Yarolem has sustained a loss of future earning capacity as a result of the work injury. Considering Ms. Yarolem's age, educational background, employment history, ability to retrain, extensive treatment, numerous surgeries, length of healing period, permanent impairment and lack of permanent restrictions and the other industrial disability factors identified by the Iowa Supreme Court, I find Ms. Yarolem has proven that she sustained a 25 percent loss of future earning capacity as a result of her work injury with John Deere.

Next, the appropriate weekly workers' compensation rate of Ms. Yarolem must be determined. The rate dispute in this matter centers on whether bonuses should be included in the calculation of Ms. Yarolem's average weekly wages.

According to Ms. Yarolem, at the time of the injury she was paid a base hourly rate. Additionally, she was eligible for profit sharing. In order to qualify for profit sharing she had to do two percent more work every six months. An employee would typically receive the profit sharing one time per year. Ms. Yarolem testified that she received the profit sharing 11 times while working at John Deere, and the amount was typically \$2,000.00 to \$3,000.00. (Tr. pp. 25-26; Ex. Q)

Ms. Yarolem testified that John Deere also has a different program called continuous improvement pay plan (CIPP). As an assembler she was also eligible for this incentive program. The basis for this program is set forth in Exhibit 20. CIPP is a type of incentive pay that rewards teams of employees who help "achieve continuous improvement of the operations to which they are assigned." (Ex. 20, p. 2). CIPP provides employees the opportunity to "maintain a consistent weekly pay level." (Ex. 20, p. 2) CIPP is paid every six months, two times a year. A CIPP team needs to meet 115 percent of a production goal to qualify for CIPP payment. (Ex. 20, pp. 2-5) Ms. Yarolem testified that she received CIPP about 22 times during her employment with John Deere. She believes the amount was \$2,000.00 to \$3,000.00 each time.

John Deere also has a program called base adjustment allowance. As an assembler she was also eligible for the base adjustment allowance. She typically received this one to two times per year. Ms. Yarolem received this every year she worked at John Deere. The amount was usually around \$200.00 to \$300.00 each time. (Testimony)

Ms. Yarolem testified that at the time of the injury she was paid an approximate hourly rate of \$18.00 and working around 40 to 45 hours per week. (Testimony; Ex. 18, pp. 1-4) Claimant included the bonuses in her calculation while defendant did not include any bonuses in its rate calculation. (Ex. 17 and Ex. S) Ms. Yarolem used the bonuses from September 18, 2011 to March 14, 2012 and divided them by 52 to determine her weekly gross earnings from the bonuses. Using this method claimant earned \$353.24 per week in bonuses. (Ex. 17-19) When this amount is added to her gross weekly earnings of \$1,019.81 her total gross weekly earnings total \$1,373.05.

Defendant believes that all of the bonuses are irregular and therefore should not be used to determine her weekly workers' compensation rate. John Deere contends that claimant's correct average weekly wage is \$1,019.81. However, this agency has regularly held that the types of bonuses at issue in this case are to be included in the calculation of claimant's average weekly wages. To find otherwise would be inconsistent with previous agency holdings. Therefore, claimant's rate calculation is adopted. Thus, Ms. Yarolem's average weekly wage is found to be \$1,373.05.

The next issue to be addressed is whether Ms. Yarolem is entitled to payment of medical expenses. Claimant seeks payment for medical treatment related to her neck. Because I found that claimant's neck conditions were causally connected to her work for John Deere and because these expenses appear to be reasonable and necessary I find that defendant is liable for these expenses. Specifically, defendant is liable for the expenses in the amount of \$403.00 as set forth in the March 14, 2012 spreadsheet attached to the statement of costs. Because defendant denied that Ms. Yarolem's neck condition was related to her work she submitted the bills to her health insurance, United Healthcare. I find defendant is also liable for the lien amount asserted by Optum/United Healthcare for treatment for Ms. Yarolem's neck. At the time of hearing the lien amount appears to have been \$8,351.90 as set forth in the February 2, 2015 letter attached to the statement of costs.

Claimant is also seeking reimbursement for the cost of independent medical examination conducted by Dr. Milas. I find that the requirements of Iowa Code section 85.39 were met and therefore, defendant shall reimburse claimant in the amount of \$665.00 for the IME.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e). 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.

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

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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 R. 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 the 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 considered all of the relevant industrial disability factors I found claimant proved by a preponderance of the evidence that she sustained a 25 percent loss of future earning capacity. Having found she sustained a 25 percent loss of earning capacity, claimant is entitled to 125 weeks of industrial disability, or permanent partial disability benefits. Iowa Code section 85.34(2)(u). Pursuant to the parties' stipulations these benefits shall commence on January 27, 2015.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment. If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

Iowa Code section 85.61(3) allows for the inclusion of regular bonuses in a claimant's average weekly wage calculation. Furthermore, this agency has previously held that the bonuses at issue in the present case are considered regular bonuses and included the bonuses in the claimant's rate calculations. See Freeman v. John Deere Davenport Works, File No. 5026012 (Feb. 3, 2011); Spaete v. John Deere Davenport Works, File No. 5031216 (App. June 12, 2012). In this particular case I did not find an evidentiary basis to diverge from the agency's practice.

This agency has previously held that a profit sharing bonus conditioned only on the company making a profit and claimant receiving it once they became eligible is considered a regular bonus. Matthew v. Thombert, Inc., File No. 959319 (App. November 17, 1993). The bonuses at issue in the present case have regularly been found to be part of claimant's average and customary wages. See Spaete v. John Deere Davenport Works, File No. 5031216 (App. June 12, 2012); Freeman v. John Deere Davenport Works, File No. 5026012 (Feb. 3, 2011). It would be inconsistent with previous agency findings to hold otherwise. Therefore, I concluded claimant's average weekly wages are \$1,373.05. The parties stipulated that at the time of the injury claimant was single and entitled to one exemption for rate purposes. Therefore, claimant's weekly workers' compensation benefits shall be paid at the rate of \$788.96.

The next issue to be determined is medical expenses. 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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975). In the present case claimant seeks payment or reimbursement for medical treatment she sought for her neck. Based on my findings I conclude defendant is liable for the medical expenses as set forth in the above findings of fact.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. Because I found that the conditions of Iowa Code section 85.39 were met I conclude defendant is liable for the cost of the Dr. Milas IME.

Finally, claimant is seeking costs. Costs are to be assessed at the discretion of the deputy commissioner. I find that the filing fee and certified mail expense are appropriate costs. Thus, defendant is liable for these costs in the amount of \$112.82. Claimant is also seeking the transcription costs for the claimant's depositions in the amounts of \$91.80 and 61.70. These depositions were used as exhibits. Therefore, I find these are appropriate costs under 4.33(1); defendants are liable for the deposition costs in the amount of \$153.50. Claimant is also seeking an expert fee for a June 2014 telephone consult with Dr. Segal in the amount of \$350.00. This consult was used to obtain Exhibit 8, pages 7 and 8. I find that this is an allowable cost under 4.33(6). Therefore, defendant is liable for this as a cost. Claimant is also seeking reimbursement for the service fee of witness Rodamaker. I find this is an allowable cost under 4.33(3). Therefore, defendant is liable for the \$120.30 service fee. Claimant is also seeking reimbursement for obtaining billing and service records from medical providers. I do not find that these are allowable costs under 876 IAC 4.33. Therefore, defendant is not liable for these expenses.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits at the weekly rate of seven hundred eighty-eight and 96/100 dollars (\$788.96), commencing on January 27, 2015.

Defendant shall be entitled to a credit against the above award for any permanent partial disability benefits paid to date.

Defendant shall be responsible for the medical expenses as set forth above.

Defendant shall pay costs as set forth above.

Defendant 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 5th day of June, 2015.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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