

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

STEVEN TEEL, JR.,	:	File No. 5067847
	:	
Claimant,	:	
	:	ARBITRATION DECISION
vs.	:	
	:	
JOHN DEERE DAVENPORT WORKS,	:	
	:	Head Note Nos: 1108.50, 1402.30,
Employer,	:	1402.40, 1403.30, 1801, 1803, 2301,
Self-Insured,	:	2401, 2501, 2803
Defendant.	:	

STATEMENT OF THE CASE

Steven Teel, Jr., filed a petition in arbitration, seeking workers' compensation benefits from John Deere Davenport Works (John Deere), a self-insured employer. The undersigned presided over a hearing in the case held in Davenport, Iowa. Teel participated personally and through attorney Robert T. Rosenstiel. John Deere participated through representative Mike Perry and attorney Troy A. Howell.

ISSUES

Under rule 876 IAC 4.149(3)(f), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The undersigned approved the hearing report because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

- 1) Did Teel sustain an injury arising out of and in the course of his employment with John Deere on March 20, 2018?
- 2) Did Teel give timely notice of the alleged injury under Iowa Code section 85.23?
- 3) Was the alleged injury a cause of temporary disability during a period of recovery?
- 4) Is Teel entitled to temporary disability or healing period benefits from:
 - a) July 26, 2018, through September 3, 2018; and

- b) December 19, 2018 through February 11, 2019?
- 5) Was the alleged injury a cause of permanent disability?
- 6) What is the nature and extent of Teel's permanent disability relating to the alleged injury, if any?
- 7) Is John Deere liable for a penalty under Iowa Code section 86.13?
- 8) Is Teel entitled to alternate care under Iowa Code section 85.27?
- 9) Are costs taxed against John Deere under Iowa Code section 86.40?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Teel and John Deere at the time of the alleged work injury.
- 2) If John Deere is liable for either or both of the alleged injuries, Teel is entitled to temporary disability or healing period benefits for the time periods of July 26, 2018, through September 23, 2018, and from December 19, 2018, through February 11, 2019, subject to John Deere's credit under Iowa Code section 85.38(2).
- 3) If Teel is entitled to benefits, John Deere is entitled to credit under Iowa Code section 85.38(2) for payment of sick pay/disability income:
 - a) \$3,119.20 for the time period from July 26, 2018, through September 3, 2018;
 - b) \$4,625.40 for the time period from December 19, 2018, through February 11, 2019.
- 4) The commencement date for permanent disability benefits, if any are awarded, is:
 - a) September 4, 2018, if only the alleged right arm injury is found compensable; or
 - b) February 12, 2019, if the alleged bilateral arm injuries are found compensable.
- 5) At the time of the alleged injury:
 - a) Teel's gross earnings were \$1,125.47 per week.

- b) Teel was married.
- c) Teel was entitled to two exemptions.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations, except as necessary for clarity. The parties are bound by their stipulations.

FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits 1 through 10;
- Claimant's Exhibits 1 through 9;
- Defendant's Exhibits A through P; and
- Hearing testimony.

After consideration of the evidence, the undersigned makes the following findings of fact.

Teel began working for John Deere in 2005. (Def. Ex. I, p. 28; Teel Testimony) He has held multiple positions with the company. (Teel Testimony) At the time Teel's symptoms for bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome led him to seek medical treatment, John Deere employed him in the job of production loader assembler. (Ex. I, p. 30; Teel Testimony)

The job required strenuous manual labor in the assembly of multiple models of John Deere production loaders. (Teel Testimony; Ex. N, pp. 83-84) Teel described his duties as "brutal," in particular due to heavy torques pulled with heavy wrenches, some of which are two feet in length. His specific duties at a given time depend on the model he is working on and any customizations to it. Teel is a hard-worker, able to perform the job despite some of its more physically taxing duties, such as using large wrenches to torque. (Teel Testimony)

In 2010, about five years into his tenure as a John Deere employee, Teel experienced shoulder and elbow pain for which he sought care. (Jt. Ex. 1-2) He participated in conservative care, including physical therapy. (Jt. Ex. 2) Teel's shoulder and elbow issues flared up again in 2012, so he reported to the John Deere medical department, where he received care. (Jt. Ex. 3) Department staff showed Teel how to do stretches for his elbow and gave him bands to wear while working. (Jt. Ex. 3)

Teel wound up seeing Tuvi Mendel, M.D., at Orthopedic Specialists in 2013 for left shoulder and left elbow complaints. (Jt. Ex. 1, pp. 4-5) Dr. Mendel described Teel's complaints as reflective of "epicondylitis type symptoms." (Jt. Ex. 1, p. 4) Dr. Mendel

administered injections to Teel's left shoulder and left elbow. (Jt. Ex. 1, pp. 4-5) Dr. Mendel found Teel at MMI for his left medial epicondylitis and released him from care following a left elbow injection in October of 2013. (Jt. Ex. 1, p. 5)

In early 2017, Teel began experiencing numbness and pain in his upper extremities. (Jt. Ex. 4, p. 28) The symptoms gradually worsened over time. (Jt. Ex. 4, p. 28) Teel experienced pain from his elbows into his hands. (Jt. Ex. 4, p. 28) His grip strength weakened. (Jt. Ex. 4, p. 28)

Zachary Waters was the safety manager at Davenport Works during the time in question. (Cl. Ex. 8, Depo. p. 3) As safety manager, he was involved in processing workers' compensation claims, including Teel's. (Cl. Ex. 8, Depo. p. 4) According to Waters, "The expected procedure [is . . .] employees will report any sort of work-related concerns to medical and to their supervisor." (Cl. Ex. 8, Depo. p. 12) Waters further testified "it's possible, but not probable" the plant medical department gave Teel straps or braces in response to his complaints and did not record having done so. (Cl. Ex. 8, Depo. p. 12) Waters conceded he does not know when Teel first complained of issues in his upper extremities. (Cl. Ex. 8, Depo. p. 12)

Teel testified at hearing about his interactions with the John Deere medical department regarding his symptoms. No one else with firsthand knowledge of these interactions testified. Teel's demeanor and the substance of his testimony were credible. (Teel Testimony)

Teel described a limited intake process when he went to the nurse station. Teel reported to the nurse station that he was experiencing tingling in his hands and fingers. Later, he also complained of pain in his elbows. John Deere medical department staff prescribed ice, rest, ibuprofen, and splints. (Teel Testimony)

Because of Teel's symptoms, he obtained care at UnityPoint Multi-Specialty Clinic on January 29, 2018, with Anthony H. Kwan, M.D., for diagnostic testing. (Jt. Ex. 4, p. 28) Dr. Kwan reached the following diagnoses based on the testing:

1. Bilateral cubital tunnel syndrome is seen. Ulnar motor conduction shows focal slowing across the elbows on both sides. Normal conduction down the forearms and across the wrist. No denervation changes seen on EMG.
2. Bilateral carpal tunnel syndrome is also seen. Mild involvement is seen with the right side more affected than the left side with latency slowing of the median sensory nerves across the wrist. Normal conduction of the medial motor nerves and EMG of the APB muscles.

(Jt. Ex. 4, p. 29) This is when Teel's conditions were first diagnosed.

There is no John Deere medical department documentation relating to services it provided Teel for complaints relating to his bilateral arm injuries until March 20, 2018.

(Ex. A; Jt. Ex. 1, pp. 7-21) A note from that date attributed to Mary Huesmann, NP, states Teel described bilateral hand paresthesias and bilateral elbow pain. (Jt. Ex. 3, p. 18) Teel further informed Huesmann he first experienced symptoms four or five months earlier and they had worsened with time. (Jt. Ex. 3, p. 18) The notes state Teel “[m]ay continue regular duty work.” (Jt. Ex. 3, p. 19)

Huesmann also noted Teel “[r]eports he has acquired ‘baseball wrist supports’ and has been wearing them, bilaterally, for the past 3 weeks.” (Jt. Ex. 3, p. 18) The medical department dispensed elastic wrist supports to wear while working and elbow pads to wear while sleeping. (Jt. Ex. 3, p. 19) Huesmann discussed stretching to help with Teel’s conditions, over-the-counter NSAIDs for discomfort, and avoiding aggravating positions while sleeping. (Jt. Ex. 3, p. 19)

On March 21, 2018, Christine Deignan, M.D., observed Teel on the job. (Jt. Ex. 3, p. 15) She was accompanied by Todd Gravert, engineer, and Mike Perry, safety analyst. (Jt. Ex. 3, p. 15) Dr. Deignan noted that Teel used guns and large wrenches for tightening or torquing. (Jt. Ex. 3, p. 16) She also noted, “Work pace is swift. Mr. Teel is required to perform extended reaching with both hands. To reach the highest work areas he has to stand on his toes. He uses his right hand predominantly and left hand occasionally.” (Jt. Ex. 3, p. 16)

Teel returned to see Dr. Deignan on April 9, 2021. (Jt. Ex. 3, p. 12) He reported his symptoms were the same with numbness in both hands and tenderness over his medial elbows. (Jt. Ex. 3, p. 12) Dr. Deignan noted Teel was “wearing soft wrist wraps during the day and wrist splints that he got himself with plastic inserts at night.” (Jt. Ex. 3, pp. 12-13) Dr. Deignan opined, “After the job site observation, it is my medical opinion, that bilateral carpal tunnel syndrome is not work related. Bilateral [m]edial epicondylitis could result from his occupational activities.” (Jt. Ex. 3, p. 13) There is no indication in the medical notes that Dr. Deignan consulted with any AMA Guides when reaching this conclusion.

After Dr. Deignan opined Teel’s bilateral carpal tunnel syndrome was not related to his employment with John Deere, Waters hand-delivered to Teel a letter dated April 18, 2018, regarding, “Alleged bilateral wrist and hand pain, numbness and tingling (bilateral carpal tunnel syndrome) reported on March 20, 2018.” (Ex. C) In the letter, Waters informed Teel:

After speaking with you, discussing your complaints and condition with John Deere Davenport Workers’ medical personnel, including Christine Deignan, M.D.[,] and Mary Huesmann, NP, reviewing your medical records and observing your job, your claim of work-related pain, numbness and tingling in your bilateral wrists and hands (bilateral carpal tunnel syndrome) and corresponding request for workers’ compensation benefits are denied. Your bilateral elbow pain reported on March 20, 2018 is accepted as work-related.

(Ex. C)

On June 20, 2018, Dr. Deignan concluded Teel was suffering from bilateral carpal tunnel and bilateral cubital tunnel rather than elbow tendonitis because his examination more strongly suggested ulnar neuritis at the elbow. (Jt. Ex. 3, pp. 11-12; Ex. B, p. 3) Dr. Deignan also opined on causation:

Examination today is most consistent with ulnar neuritis at the elbow instead of tendonitis. Assuming the records confirm the plan is for median and ulnar nerve release surgery[,] I explained to him he appears to have four nerve compression diagnos[e]s at this time. The simultaneous diagnoses of four peripheral nerve issues makes a personal medical condition much more likely than an occupational cause. It is my medical o[p]inion that both his elbow and wrist conditions are non-work related.

(Jt. Ex. 3, pp. 11-12)

Waters mailed Teel a letter dated July 13, 2018, regarding, "Alleged bilateral elbow pain (bilateral cubital tunnel syndrome) reported on March 20, 2018." The letter informed Teel:

John Deere Davenport Works has re-evaluated your claim of alleged work-related bilateral elbow pain first reported on March 20, 2018. After speaking with you and discussing your complaints and condition with John Deere Davenport Works' medical personnel, including Christine Deignan, M.D., your claim of work-related bilateral elbow pain (bilateral cubital tunnel syndrome) and corresponding request for worker[s'] compensation benefits are denied. John Deere Davenport Works continues to deny your claim for work-related pain, numbness and tingling in your bilateral wrists and hands (bilateral carpal tunnel syndrome).

(Ex. C, p. 9)

John Deere conducted a review of the job duties for Teel's position. As part of that, Waters performed Teel's duties during one shift. (Cl. Ex. 8, Depo. p. 8) He found multiple tasks physically challenging enough that he discussed them with Gravert and Tim Rockstroh, an ergonomics specialist. (Cl. Ex. 8, Depo. p. 8)

At John Deere Davenport Works, Rockstroh specializes in ergonomics as part of a three-year job assignment. (Def. Ex. J, p. 49, Depo. p. 5) John Deere has provided him training on ergonomics as part of the assignment. (Def. Ex. J, p. 49, Depo. p. 8) Waters calls him the facility's "ergo representative." (Cl. Ex. 8, Depo. p. 6) He described Rockstroh's role at Davenport Works to include "identify[ing] and correct[ing] ergo[nomic] issues on the shop floor," which is where Teel worked, in an effort to make John Deere employees' jobs better. (Cl. Ex. 8, Depo. p. 6)

Rockstroh performed an ergonomic review of Teel's job duties. (Cl. Ex. 8, Depo. p. 6; Def. Ex. J, p. 50, Depo. p. 9) He made a series of findings based on the review. (Def. Ex. J, p. 50, Depo. p. 10) Rockstroh listed his findings in an email dated May 8,

2018, to Gravert and Kyle Gambon, safety analyst. (Cl. Ex. 1; Def. Ex. J, p. 50, Depo. p. 9)

Rockstroh identified the issue, “Contact stress and work is to[o] low inside the frame when hooking up the drive shaft.” (Cl. Ex. 1) He testified the issue stemmed from Teel’s posture. (Ex. J, p. 50, Depo. p. 10) To perform the function, Teel had to bend at the waist and lift, which implicated his lower back. (Ex. J. p. 50, Depo. pp. 10-11) There is no indication this potential issue implicated Teel’s upper extremities.

The second ergonomic concern Rockstroh noted was, “Extended reach about 3 ft from ankles and awkward posture when torqueing [*sic*] the 4 drive shaft bolts at 172 NM.” (Cl. Ex. 1) According to Rockstroh’s deposition testimony, Teel had to perform a high-torque one-handed due to the extended reaching. (Ex. J, p. 50, Depo. p. 11) The poor posture caused by the tension raised concern about Teel’s arms and back. (Ex. J, p. 50, Depo. p. 11)

Rockstroh followed with the observations of “30 degree wrist angle when installing hoses to axle pump” and “30 degree wrist angle and body contact stress when hooking up wiring harness to ecu.” (Cl. Ex. 1) It is ideal from an ergonomics perspective to have one’s hand and arm be in line. (Def. Ex. J, p. 50, Depo. p. 12) The angle Rockstroh references is between the hand and the arm. (Def. Ex. J, p. 50, Depo. p. 12) It puts stress on the hand and wrist.

Next on Rockstroh’s list is: “Stress on hands and wrists having to rotate wiring harness so its [*sic*] indexed correctly.” (Cl. Ex. 1) Rockstroh testified Teel had to twist the harness to get it to the proper angle to hook it up to the ECU. (Def. Ex. J, p. 51, Depo. p. 13) He had to perform this action once every unit or four times per day over a two-hour split he was working at the time. (Def. Ex. J, p. 51, Depo. p. 13) Rockstroh categorized the frequency of the action’s occurrence as “not very repetitive.” (Def. Ex. J, p. 51, Depo. p. 13)

Gravert testified to his experience with what, in his opinion, constituted high-repetition jobs at previous employers. (Cl. Ex. 6, Depo. p. 4) Against the backdrop of Gravert’s past experience, he explained why Teel’s job duties did not cause him concern from an ergonomics standpoint:

There was nothing in this job that would, in my opinion, warrant major issues. There were – As with every job on a manufacturing site, there are certain ones that require more force, and with ergonomics, usually when you rank ergonomics there’s – to come up with a score, it is the stress duration and cycle, or the time that it takes, and in our job we’re doing at most four machines a day, so that reduces – that greatly reduces the number of cycles. When I said I worked for previous jobs, our cycles were in the, you know, high hundreds for repetitions.

(Cl. Ex. 6, Depo. p. 8)

Rockstroh observed Teel use awkward posture and overhead reaching to hook up hoses to a hydraulic tank. (Cl. Ex. 1) To complete the task, Teel had to work over his head, which took him out of his power zone (the area between his shoulders and waist in which it is best for a person to work. (Def. Ex. J, p. 51, Depo. pp. 14-15) This action put Teel in an awkward position with respect to his neck, back, and hips. (Def. Ex. J, p. 51, Depo. p. 14)

Further, Teel used “open hand strikes to install large suction hoses from transmission to hydraulic tank,” which merited inclusion on the list. (Cl. Ex. 1; Def. Ex. J, p. 51, Depo p. 15) In order to get the rubber hose attached, Teel (and at least one other employee) would spray it with lubricant and bump with his hand. (Def. Ex. J, p. 51, pp. 15-16)

Rockstroh also observed Teel use a 90-degree hand-to-wrist angle when installing spacers between hydraulic tank and frame tabs. (Cl. Ex. 1; Def. Ex. J, p. 52, Depo. p. 17) A 90-degree angle is about as far as one’s wrist can bend, which creates an ergonomic issue. (Def. Ex. J, p. 52, Depo. p. 17) Gravert explained:

A wrist angle of 90 degrees from an ergonomic standpoint is not a great thing. Again, if you review it from a job aspect, duration and cycle duties would put it at what we would classify as normal risk.

(Cl. Ex. 6, p. 10) Teel performed this function twice per unit; or eight times total each day. (Def. Ex. J, p. 52, Depo. p. 17)

Teel used an Atlas Copco gun that weighs about 12 pounds to tighten torque bolts. (Cl. Ex. 1; Def. Ex. J, p. 51, Depo. pp. 18-19). This tool spurred another finding because Teel had to use the gun over his head. (Def. Ex. J, p. 51, p. 19) Teel used the tool eight times daily. (Def. Ex. J, p. 51, Depo. p. 19)

Waters participated in discussions with his team, including Rockstroh and Mike Perry, regarding ergonomic concerns about Teel’s job duties. (Cl. Ex. 8, Depo p. 5) Gravert organized a meeting to discuss Rockstroh’s list. (Cl. Ex. 2) Ultimately, they considered whether John Deere would be able to alleviate the 90-degree wrist angle Teel was working at when production transitioned from the L to K series. (Cl. Ex. 6, Depo pp. 9-10)

Gravert’s testimony with respect to the 90-degree wrist angle Teel had to use to perform a job function is insightful as to the approach regarding ergonomics and job duties. The goal was not to eliminate all risk posed by Teel’s job duties; rather, the goal was to mitigate it. This job function, as performed by Teel in the lead-up to his worsening symptoms, constituted a “normal” risk to him as a John Deere worker, when viewed through the ergonomics lens. (Cl. Ex. 6, Depo. p. 10) John Deere ultimately deemed the risk acceptable, according to Gravert, given the higher safety risks posed by potential alternatives. (Cl. Ex. 6, Depo. p. 11)

Brent Bowers testified in a deposition on February 14, 2020. (Cl. Ex. 9, Depo. p. 1) He works for John Deere as an ergonomics program manager. (Cl. Ex. 9, Depo. p. 3) In that position, Bowers is considered a technical subject matter expert on ergonomics and he is responsible for developing guidelines and standards for the company and training materials for engineers. (Cl. Ex. 9, p. 5) One of the primary John Deere standards on which Bowers has worked focuses on ergonomic design for manufacturing. (Cl. Ex. 9, Depo. p. 6) According to Bowers, he attempts to get John Deere workers to recognize “the science and art of understanding human performance capabilities” and he helps the company “plan and design around those capabilities” in an effort “to keep people productive, efficient, and safe.” (Cl. Ex. 9, Depo. p. 5)

At the time of the deposition, Bowers was working on an annex to the standards specifically on drive shaft components and connections. (Cl. Ex. 9, Depo. p. 6) This work brought Bowers to Teel’s workstation on February 15, 2019. (Cl. Ex. 9, Depo. pp. 8-9) The ergonomic standards contain recommendations and guidelines on the use of torque wrenches, both on their length and the amount of force workers apply to them. (Cl. Ex. 9, Depo. p. 8) Bowers was viewing Teel’s use of torque wrenches through that frame in order to understand the differences based on the various types of drive shaft connections. (Cl. Ex. 9, Depo. p. 8)

Waters informed Bowers that an employee had filed a workers’ compensation claim. (Cl. Ex. 9, Depo. p. 11) He asked Bowers general questions about whether bilateral carpal tunnel syndrome is something one would expect to see for someone working in Teel’s position, given the job duties. (Cl. Ex. 9, Depo. p. 12) Based on his training, education, and experience, Bowers opined that it would be uncommon for an employee to develop bilateral carpal tunnel syndrome caused by Teel’s job duties. (Cl. Ex. 9, Depo. pp. 12-13) He further testified that it is more common to see it occur in one arm, not both, though bilateral carpal tunnel syndrome is possible. (Cl. Ex. 9, Depo. pp. 13-14)

As part of Bowers’ job, he documents concerning elements of a job and asks questions about them. (Cl. Ex. 9, Depo. p. 14) Bowers took video and photographs of Teel’s job duties. (Cl. Ex. 9, Depo. p. 14) However, Bowers did not see anything that caused him enough concern to make a report. (Cl. Ex. 9, Depo. p. 14)

Bowers explained his primary takeaway from Teel’s job was that the reach distance from the side of the chassis on the production loader to the position where the bolts are fastened exceeded John Deere’s guidelines and put Teel into an awkward position relative to his back. (Cl. Ex. 9, Depo. p. 15) Further, the torque required to perform some of the job duties was “a little bit high, but that’s something [John Deere] can manage through tooling.” (Cl. Ex. 9, Depo. p. 15) He elaborated further that some of the high-torque values such as those in Teel’s work have the risk of putting employees in harm’s way of developing musculoskeletal disorders to the upper extremity such as tendonitis, epicondylitis, rotator cuff tears, and other disorders of the shoulder and arm. (Cl. Ex. 9, Depo. pp. 23-24)

After John Deere rejected Teel's claim, he went to Tobias Mann, M.D., for care. (Jt. Ex. 7, pp. 37-38) Teel's first appointment with him was on July 3, 2018. (Jt. Ex. 7, p. 39) Dr. Mann diagnosed Teel with bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. (Jt. Ex. 7, p. 40) Dr. Mann and Teel decided to proceed with release surgeries on both arms for both conditions, beginning with the right arm. (Jt. Ex. 7, pp. 40-41)

On July 26, 2018, Dr. Mann performed surgery on Teel consisting of right carpal and cubital tunnel release with anterior subcutaneous ulnar transposition. (Jt. Ex. 7, p. 42; Jt. Ex. 8, pp. 54-56) Teel participated in physical therapy post-surgery and followed up with Dr. Mann on August 14, 2018. (Jt. Ex. 7, p. 42) He reported to Dr. Mann improvement with his numbness and tingling, and having no significant concerns. (Jt. Ex. 7, p. 42) On August 28, 2018, Dr. Mann authored a note releasing Teel to return to work with no restrictions on September 4, 2018. (Jt. Ex. 7, p. 43) On August 30, 2018, Teel stated he was "not having a lot of pain at this time," according to notes from a follow-up visit with Katherine O'Day, M.O.T., O.T.R./L. (Jt. Ex. 9, p. 68)

Teel saw Huesmann for a return-to-work evaluation on September 4, 2018. (Jt. Ex. 3, p. 10) Teel stated he was ready to return to full-duty work. (Jt. Ex. 3, p. 10) He denied pain. (Jt. Ex. 3, p. 10) Huesmann released him to return to work at John Deere without restrictions. (Jt. Ex. 3, p. 10)

On September 17, 2018, Teel returned to Dr. Mann. (Jt. Ex. 7, p. 44) Despite an overall improvement in Teel's symptoms, he told Dr. Mann that when he made a fist, it felt like needles in his right hand. (Jt. Ex. 7, p. 44) On examination, Dr. Mann noted numbness to light touch on the medial elbow, ring finger, and little finger. (Jt. Ex. 7, p. 44)

Dr. Mann next examined Teel on November 19, 2018. (Jt. Ex. 7, p. 45) Teel informed Dr. Mann, "He was doing really well, but over the past month, he does feel that it has been his numbness in the right is getting worse again." (Jt. Ex. 7, p. 45) Teel felt the return of his symptoms was due to him using his arm too soon after the surgery. (Jt. Ex. 7, p. 45) Dr. Mann opined, "It is somewhat puzzling to me that he had good relief following surgery, but now a few months later is feeling that his symptoms are returning." (Jt. Ex. 7, p. 45)

Dr. Mann and Teel agreed on a plan. (Jt. Ex. 7, p. 46) Dr. Mann noted "we will proceed with a repeat EMG of his right upper extremity from the same provider that did his preoperative one, and have them compare this." (Jt. Ex. 7, p. 46) After the repeat EMG of Teel's right arm, he followed up with Dr. Mann on December 10, 2018. (Jt. Ex. 7, p. 48) Dr. Mann noted:

We had a long discussion today regarding his diagnosis as well as his treatment options. We will start him on some gabapentin for his pain. At this point, I do not think that there is any significant neural compression given his fairly benign repeat EMG. We will continue to monitor this for

now. Should this not improve with some more time, we may have to look at a different etiology for his right upper extremity discomfort.

(Jt. Ex. 7, p. 49)

Despite Teel's complaints about his right arm, he decided to move forward with the planned carpal and cubital tunnel release surgery on his left arm. (Jt. Ex. 7, p. 49) Dr. Mann performed the surgery, with anterior subcutaneous ulnar nerve transposition, on December 19, 2018. (Jt. Ex. 7, p. 49; Jt. Ex. 8, pp. 58-61) He also gave Teel a right carpal tunnel injection. (Jt. Ex. 8, pp. 58-61)

John Deere provides "weekly indemnity non-occupational disability benefits" to qualifying employees. (Ex. F, p. 19) To receive such benefits, an employee must apply using John Deere's "Weekly Indemnity ('WI') Disability Application." (Ex. F, p. 19) This includes having the employee's attending physician complete a section of the form. (Ex. F. p. 19) On this section of the form, Dr. Mann checked the box indicating neither Teel's left carpal tunnel syndrome nor his left cubital tunnel syndrome arose out of his employment. (Ex. F. p. 19) Dr. Mann signed the form and dated his signature December 14, 2018. (Ex. F, p. 19)

Teel participated in physical therapy after surgery. (Jt. Ex. 7, p. 51) He saw Dr. Mann for a follow-up exam on February 11, 2019. (Jt. Ex. 7, p. 52) Dr. Mann noted Teel's "[p]ain and numbness significantly improved with surgery" and his "[n]ight symptoms have resolved." (Jt. Ex. 7, p. 52) Dr. Mann anticipated improved sensation with time and released him to return to work without restrictions. (Jt. Ex. 7, pp. 52-53) He stated Teel could follow up as needed. (Jt. Ex. 7, p. 52) Teel did not return to Dr. Mann for care. (Ex. G, p. 20; Testimony)

Huesmann performed a return-to-work evaluation of Teel on February 11, 2019. (Jt. Ex. 3, p. 8) Teel denied complications during or after surgery. (Jt. Ex. 3, p. 8) He also shared that he received and passed his physical therapy goals. (Jt. Ex. 3, p. 8) Teel told Huesmann he was ready to return to work full duty despite "slight discomfort and numbness," for which he was taking gabapentin and tramadol. (Jt. Ex. 3, p. 8) Huesmann released Teel to return to regular-duty work at John Deere. (Ex. 3, p. 8)

Defense counsel met with Dr. Mann on July 26, 2019. (Ex. G, p. 20) After the meeting, defense counsel wrote a summary of their conversation in a letter dated July 30, 2019. (Ex. G, p. 20) Dr. Mann signed the letter on August 15, 2019, signifying he felt the summary authored by defense counsel was an accurate representation of their discussion. (Ex. G, p. 21)

Dr. Mann affirmed he did not recommend performing a formal permanent impairment rating until at least December of 2019, but did not anticipate Teel sustaining any permanent disability in his arms following his surgeries and recovery. (Ex. G, pp. 20-21) The letter summarizes Dr. Mann's opinion on causation thusly:

I have never seen Mr. Teel's job at John Deere Davenport Works performed. Therefore, I would defer to a medical doctor that has seen Mr. Teel's job at John Deere Davenport Works performed on the issue of whether Mr. Teel's bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome are causally related to his work at John Deere Davenport Works. With that said, the *AMA Guides to the Evaluation of Disease and Injury Causation* state the following regarding cubital tunnel syndrome: "In summary, no causal relationship between repetitive elbow motions and ulnar neuropathy at the elbow in industrial workers has been demonstrated in the medical literature." Like the *AMA Guides to the Evaluation of Disease and Injury Causation*, I am not aware of any medical studies that have causally connected cubital tunnel syndrome to repetitive motion in an industrial work setting.

(Ex. G, p. 21)

On July 31, 2019, Teel went to the University of Iowa Hospitals and Clinics (UIHC). (Jt. Ex. 10, p. 76) Teel complained of "paresthesias of the fingers and the fingers feel as though they are swollen all the time, "sharp pain every time he tries to make a fist," "difficulty sleeping," "coldness on his hands now," and "[f]ull elbow extension provokes discomfort particularly of the long, ring, and small finger." (Jt. Ex. 10, p. 76) A physical exam revealed:

He does have pain with palpation of each of the surgical sites. On the left, the ulnar nerve is at the medial epicondyle and is felt perching over the medial epicondyle. The right ulnar nerve is not as well palpable. Tinel's at the right carpal tunnel provokes pain to the dorsal hand. Tinel's at the left carpal tunnel provokes paresthesias to the index and long finger. Median nerve compression test causes pain at the bilateral wrists and also paresthesias to the ring and small finger on the right and left to the thumb, index and long. Phalen's causes pain and numbness to the index and long finger on the left but on the right it almost relieves his symptoms. He does have paresthesias with Tinel's at the bilateral elbows.

(Jt. Ex. 10, p. 76) Ultimately, UIHC decided on a repeat EMG to evaluate for interval change and ultrasound evaluation of bilateral ulnar nerves. (Jt. Ex. 10, p. 77)

However, Teel later learned his health insurance would not cover the follow-up care at UIHC. (Jt. Ex. 10, p. 79) After confirming this was the case, Teel sought a referral from UIHC to a provider in the Quad Cities area. (Jt. Ex. 10, p. 79) Teel did not obtain any additional care prior to hearing. (Teel Testimony)

Teel saw Richard Kreiter, M.D., for an IME on December 10, 2019. (Cl. Ex. 3, p. 4) Dr. Kreiter performed an in-person evaluation of Teel and reviewed medical records, excluding those relating to recent care at UIHC. (Cl. Ex. 3) After a physical exam, Dr. Kreiter's impression was "recurrent or incomplete postoperative carpal tunnel release" of the bilateral wrists and post-operative anterior transposition of the ulnar nerves

bilaterally with motor and sensory dysesthesias with the left greater than the right. (Cl. Ex. 3, p. 8)

On causation, Dr. Kreiter opined:

On 03-20-2018, Mr. Teel reported to the medical department at John Deere with a four to five month history of bilateral hand and elbow pain. Even prior to that date, on 01/29/18, he had EMG/nerve conduction studies by Dr. Kwan which revealed bilateral carpal tunnel syndrome with median nerve compromise and bilateral ulnar nerve compromise with cubital tunnel entrapment. The injuries and symptoms were cumulative in nature. Mr. Teel had worked approximately 14 to 15 years as an assembler at John Deere. Prior to his work there, he had never been treated by an MD, DO or chiropractor for similar complaints. In the records, his work was described as putting engines in place and there were two workers doing that. This was done at various levels, sometimes on the floor, sometimes on platform and sometimes going up stairs and at times standing on his toes to reach his goal. He used handheld guns and wrenches, some of which were 2 feet in length, to tighten bolts. This was done at a swift pace and at times involved awkward positions and extended reaching. These activities seemed to have some risk factors for carpal tunnel symptoms of repetition, fundamentally doing the same thing always, using hand force, at various positions of the upper extremity with awkward wrist and elbow positions. The AMA Guide to Evaluation of Disease and Injury indicates a combination of risk factors of force, repetition and posture are associated with carpal tunnel syndrome. It states the data has consistently demonstrated the highest rate of carpal tunnel syndrome occurs in occupations with high upper extremity physical demands including assembly work such as automotive assembly, factors, etc. The ulnar nerve or cubital tunnel etiology is difficult to determine. There is some evidence that a combination of risk factors of force, repetition and position are also involved with aggravation of the ulnar nerve in the cubital canal.

(Cl. Ex. 3, p. 4)

Dr. Kreiter further opined:

It is my opinion, the treatment received has been necessitated by his work situation but the surgical outcome has been unfortunate. I have performed many carpal tunnel releases. If done prior to onset of permanent numbness and the ligament released completely, the symptoms are relieved and there should be no permanent impairment. An ulnar nerve transposition may have a less predictable result as compared to the carpal tunnel releases, but no outcome as Mr. Teel is now experiencing.

Mr. Teel has not achieved MMI. He claims his symptoms are significant as they were preoperatively. He has significant motor and sensory changes along with dysesthesias as a result of the constricted nerve irritation. These are significant impairments.

(Cl. Ex. 3, pp. 4-5)

Defense counsel wrote Rhea Allen, M.D., a letter dated December 30, 2019, in advance of a medical examination. (Ex. K, pp. 69-74) The letter summarized Teel's condition and the care he received. (Ex. K, pp. 69-73) Defense counsel also posed a series of questions regarding Teel's condition. (Ex. K, pp. 73-74) Later, defense counsel sent Dr. Allen a copy of the transcript of Rockstroh's deposition in this case and medical records from UIHC. (Ex. K, pp. 75-76; Ex. L, p. 79)

Before authoring a report, Dr. Allen observed Teel perform his job firsthand. (Ex. L, p. 77) Dr. Allen's report contains the following job analysis:

According to the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd edition, Melhorn et al (c. 2014), page 282, there is very strong evidence of relationship between a combination of risk factors, including force and repetition, force and posture and carpal tunnel syndrome. Although I agree that Mr. Teel does a wide variety of activities in his job, the actual exertion required is forceful, repetitive, and associated with awkward upper extremity postures. Some examples are use of air impact tools, hand tools, torque wrenches, and snap ring pliers. Most of the wrenching requires counter wrenching with the other hand, so he uses both upper extremities. Getting hoses in position requires reaching in among other fixtures and forceful, awkward postures of the wrists. The most forceful torques use an air impact tool, but the tool itself is heavy and awkward to get into position. (620 N-m torque) A number of "P" clamps are used, and these require a lot of force to bend the clamp out to get it on. The yoke on the drive shaft requires that the drive shaft (and attached transmission) be turned to align the bolts. This takes a lot of force. The exhaust pipe hose clamps are spring loaded and at an awkward angle to get a DC tool in position to tighten and some of these require working overhead. Hoses have to be final installed in rubber grommets under the engine/drive shaft assembly after the engine is already in place, which makes access very difficult. The drain hose on the bottom of the hydraulic tank takes 103 N-meters of torque and the use of a counter wrench in a tight, awkward position. Two other torques in the same area are 214 N-m. There is frequent use of 41 mm wrenches that are about two feet long, so the wrenching is heavy.

(Ex. N, pp. 83-84)

Further, Dr. Allen addressed whether Teel's cubital tunnel syndrome arose out of and in the course of his employment with John Deere. (Ex. N, p. 85) Dr. Allen cited to

the AMA Guides on Causation for the proposition of “no causal relationship between repetitive elbow motions and ulnar nerve compression at the elbow in industrial workers has been demonstrated in the medical literature” and concluded, to a reasonable degree of medical certainty, Teel’s bilateral cubital tunnel syndrome was not work related. (Ex. N, p. 85)

On the question of causation regarding Teel’s carpal tunnel syndrome, Dr. Allen opined:

In my opinion, the job I observed requires repetitive, forceful upper extremity use, often in awkward positions. In my opinion, to a reasonable degree of medical certainty, Mr. Teel’s carpal tunnel syndrome was at least work aggravated.

(Ex. N, p. 85) Dr. Allen found Teel to be at MMI following carpal tunnel release surgery. Dr. Allen concluded Teel does not need any work restrictions, but did not expressly opine on what, if any, permanent impairment he may have sustained due to his bilateral carpal tunnel syndrome. (Ex. N, pp. 85-86)

At the time of hearing, Teel was performing his job duties at John Deere without restrictions despite a limited improvement in his symptoms. According to Teel, it is difficult for him to torque wrenches because of “shockwaves” he experiences in his arms. It has been a process for him to try to find a way to get through the job. Nonetheless, as of the time of hearing, Teel had not missed work due to his symptoms. (Teel Testimony)

Teel described his symptoms at the time of hearing as including numbness and tingling. His hands fall asleep while he is sleeping. This interferes with his sleep. (Teel Testimony)

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers’ Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the alleged date of injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injuries or conditions at issue in this case are after July 1, 2017, the Iowa Workers’ Compensation Act, as amended in 2017, applies. See, e.g., Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. Constitutional Issue.

Teel attacks the constitutionality of the 2017 amendments—specifically, the paragraph now codified at Iowa Code section 85.34(2)(x), which states:

In all cases of permanent partial disability described in paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent

impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

According to Teel, this provision prevents the agency from considering lay testimony and limits the agency's ability to use its experience, technical competence, and specialized knowledge when assessing the extent of permanent functional disability. John Deere counters the agency does not have jurisdiction to consider or decide the constitutional question Teel poses. John Deere is correct.

The Iowa Constitution establishes three branches of government: the legislative, the executive, and the judicial. See Iowa Const. Art. III, § 1. The Iowa Division of Workers' Compensation (DWC) is a part of the Department of Workforce Development (IWD), an executive branch agency. See Iowa Code § 84A.1(4). Under the Iowa Constitution, the courts have sole jurisdiction to determine the constitutionality of an Iowa statutory provision. Varnum v. Brien, 763 N.W.2d 862, 875–76 (Iowa 2009). Consequently, the agency does not have legal authority to declare a statute unconstitutional. See Sherman v. Pella Corp., 576 N.W.2d 312, 315 (Iowa 1998) (citing Shell Oil Co. v. Bair, 417 N.W.2d 425, 429–30 (Iowa 1987)). This is why the Commissioner has taken the position that when a party challenges the constitutionality of a provision of the Iowa Workers' Compensation Act, the agency must operate under the presumption the statute is constitutional and issue a decision accordingly. See Heeren v. Derby Trucking, LLC, File No. 5067250 (App. Dec. 30, 2020); see also Hammond v. Peterson Air Conditioning & Heating Serv., Inc., File 1263174 (App. Jul. 22, 2002).¹ Consequently, this arbitration decision does not address the constitutional issue and presumes the challenged statutory provision is constitutional.

2. Notice.

Iowa Code section 85.23 requires an injured employee to give the employer notice of the alleged work injury within 90 days of the date on which the employee "knew or should have known that the injury was work-related." If the injured employee fails to give the employer timely notice of the injury, the employee receives no workers' compensation benefits. The purpose of the notice requirement is to give the employer an opportunity to investigate the alleged injury while the information regarding it is fresh. Dillinger v. City of Sioux City, 368 N.W.2d 176, 180 (Iowa 1985). "Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence." Driscoll v. Cargill, Inc., File No. 5058759 (App. Apr. 3, 2020) (citing DeLong v. Iowa State Highway Comm'n, 295 N.W. 91 (Iowa 1940)).

¹ Despite the lack of authority for the DWC to decide constitutional issues, a party to an administrative proceeding must raise such issues at the agency level in order to preserve them for judicial review. Garwick v. Iowa Dep't of Transp., 611 N.W.2d 286, 288-89 (Iowa 2000).

Multiple members of the John Deere medical department interacted with Teel regarding his bilateral upper extremity symptoms. None of the members of the medical department testified. In contrast, Teel credibly testified at hearing on the question of when he gave John Deere, through its medical staff, notice of the symptoms he was experiencing in his arm. There is an insufficient basis in the record from which to conclude Teel failed to give John Deere timely notice.

Moreover, even if we assume *arguendo* Teel did not seek care from the John Deere medical department for his arm symptoms before March 20, 2018, the evidence shows Teel gave notice within 90 days of the date on which he knew or should have known that his symptoms might be caused by a condition or injury arising out of and in the course of his employment with John Deere. On January 28, 2018, Teel saw Dr. Kwan for his symptoms. While Dr. Kwan noted Teel's "ongoing complaints of bilateral lower arm and wrist pain and numbness into his hands," he also documented a worsening over time of Teel's symptoms: "Symptoms started almost a year ago and now his hands feel numb all the time. Pain extends from the elbows down into his hands. He also feels grip strength decreasing." (Jt. Ex. 4, p. 28)

Thus, the evidence shows Teel's worsening symptoms led him to seek care that ultimately included the testing that allowed Dr. Kwan to diagnose bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome. After learning of Dr. Kwan's diagnoses on January 28, 2018, Teel knew or should have known of the seriousness of his conditions and their potential work-relatedness. He notified John Deere on March 20, 2021, within 90 days of gaining the requisite knowledge. John Deere then conducted an investigation of Teel's injuries and ultimately denied his claim.

John Deere has failed to meet its burden to prove a notice defense under Iowa Code section 85.23. The evidence establishes it is more likely than not Teel gave John Deere notice of his injuries within 90 days of the date on which he knew or should have known they might arise out of and in the course of his employment with John Deere. Teel complied with the statute and its purpose was fulfilled by John Deere's investigation.

3. Causation.

The claimant has the burden to prove by a preponderance of the evidence that the alleged injuries arose out of and in the course of employment with the employer. Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253 (Iowa 2010) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)); see also Douglas v. Vermeer Mfg., File No. 5062611 (App., Oct. 23, 2019) (citing Ciha, 552 N.W.2d at 150 and Miedema, 551 N.W.2d at 311). "Employers may raise any number of arguments to contest an employee's assertion that an injury arose out of and in the course of employment." Vegors, 786 N.W.2d at 254. Such contestations do not shift the burden of proof on causation, which the claimant retains. Id.

"Medical causation 'is essentially within the domain of expert testimony.'" Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Dunlavy

v. Economy Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). “With regard to expert testimony[,] [t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.” Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)).

Teel gave credible, detailed testimony about his work duties. John Deere employees also provided extensive testimony from an ergonomic focus regarding the risks of his position and the review of his job duties. This testimony was informative and helpful, but not dispositive on the question of causation.

None of the John Deere employees who gave deposition or hearing testimony are medical doctors. In contrast, multiple doctors have opined on medical causation in this case. The expert medical opinions are more persuasive than the opinions from nonmedical workers. This decision therefore gives the assessments of the nonmedical workers less weight than the medical doctors’ expert opinions on causation.

Teel alleged injuries to both of his upper extremities. Physicians have diagnosed Teel with two distinct bilateral conditions: cubital tunnel syndrome and carpal tunnel syndrome. This decision will address the question of causation with respect to each condition in turn.

a. Cubital Tunnel Syndrome.

Doctors have addressed whether Teel’s bilateral cubital tunnel syndrome was caused by his work at John Deere as follows:

- Dr. Deignan watched Teel perform his job and, based on that, her examination of him, and medical expertise, concluded Teel’s cubital tunnel syndrome was not caused by his employment. (Jt. Ex. 3, p. 13)
- Teel’s surgeon, Dr. Mann, adopted the opinion written by defense counsel in which he defers to doctors who have seen Teel perform his job at John Deere. While Dr. Mann stops short of expressly opining on the cause of Teel’s cubital tunnel syndrome, he signed onto the statement quoting the AMA Guides to the Evaluation of Disease and Injury Causation (AMA Guides on Causation) conclusion that there is no causal relationship between repetitive elbow motions and ulnar neuropathy at the elbow in industrial settings. (Ex. G, p. 21) He also agreed he is “not aware of any medical studies that have causally connected cubital tunnel syndrome to repetitive motion in an industrial work setting.” (Ex. G, p. 21)

- Dr. Kreiter opined, “The ulnar nerve or cubital tunnel etiology is difficult to determine. There is some evidence that a combination of risk factors of force, repetition and position are also involved with aggravation of the ulnar nerve in the cubital canal.” (Cl. Ex. 3, p. 4)
- Dr. Allen relied on the AMA Guides on Causation to conclude Teel’s bilateral cubital tunnel syndrome was not work related. (Ex. N, p. 85)

While Teel argues Dr. Kreiter opined Teel’s work at John Deere caused his bilateral cubital tunnel syndrome, the wording of Dr. Kreiter’s opinion is not so clear. Dr. Kreiter stated, “The ulnar nerve or cubital tunnel etiology is difficult to determine.” He further opined there exists “some evidence that a combination of risk factors” present in Teel’s job duties are “involved with aggravation of the ulnar nerve in the cubital canal.” But he did not identify the referenced evidence.

Other doctors relied on the AMA Guides on Causation for the conclusion there is no evidence of a causal link in the medical literature between industrial work and cubital tunnel syndrome. While Dr. Mann did not expressly opine on causation, he shared the findings in the AMA Guides on Causation and further stated that he is personally unaware of any causal connection established in medical literature between industrial work and cubital tunnel syndrome. Thus, Dr. Mann reinforces the opinions of Dr. Deignan (which did not reference the AMA Guides on Causation) and Dr. Allen (which cited the AMA Guides on Causation) and undermines the opinion of Dr. Kreiter on the question of whether Teel’s employment at John Deere caused his bilateral cubital tunnel syndrome.

The lack of specificity in Dr. Kreiter’s causation opinion makes it less persuasive than the opinions of Drs. Deignan and Allen, which are reinforced by Dr. Mann’s assertion and the AMA Guides on Causation conclusion regarding the lack of medical studies showing a causal connection between industrial work duties and cubital tunnel syndrome. Consequently, Teel has failed to prove by a preponderance of the evidence his employment with John Deere caused his bilateral cubital tunnel syndrome. The evidence does not establish Teel’s bilateral cubital tunnel syndrome arose out of and in the course of his employment with John Deere.

b. Carpal Tunnel Syndrome.

Unlike cubital tunnel syndrome, the AMA Guides on Causation offers consensus that industrial work like Teel’s may cause carpal tunnel syndrome. The summary defense counsel wrote for Dr. Mann, which he adopted, was silent on the causation question regarding carpal tunnel syndrome. And Dr. Deignan did not reference the AMA Guides on Causation when opining that Teel’s job did not cause his bilateral carpal tunnel syndrome. However, Drs. Kreiter and Allen both rely on this fact as part of the basis for concluding Teel’s industrial work duties either caused (Dr. Kreiter) or at least aggravated (Dr. Allen) Teel’s bilateral carpal tunnel syndrome. Consequently, Drs. Kreiter and Allen’s opinions on the cause of Teel’s bilateral carpal tunnel syndrome are

most persuasive. The weight of the evidence establishes it is more likely than not Teel's employment with John Deere caused his bilateral carpal tunnel syndrome.

4. Rate.

At the time of Teel's bilateral carpal tunnel, his gross earnings were \$1,125.47 per week. He was married and entitled to two exemptions. Teel's weekly benefit rate is seven hundred four and 93/100 dollars (\$704.93).

5. Permanent Disability.

"[A] claim for permanent disability benefits is not ripe until maximum medical improvement [or "MMI"] has been achieved." Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Larson § 80.03D[3] n. 10, at D80-43 to D80-48.2). The Iowa Supreme Court has explained MMI in workers' compensation thusly:

"MMI" is a term of art commonly used by the commissioner, attorneys practicing in the field of workers' compensation law, and medical providers expressing opinions affecting claimants' entitlement to healing period benefits and permanent partial disability benefits under Iowa Code section 85.34. The term is used as an alternative means of expressing the point at which "it is medically indicated that significant improvement from the injury is not anticipated." Iowa Code § 85.34(1). A treatise on Iowa workers' compensation law uses "maximum recuperation" as an alternative moniker for the MMI concept. See 15 James R. Lawyer, Iowa Practice Series: Workers' Compensation, § 13:3, at 135 (2011).

Waldinger Corp. v. Mettler, 817 N.W.2d 1, 6 n. 2 (Iowa 2012).

Here, the parties stipulated to a commencement date for permanent disability benefits, if any are awarded, of February 12, 2019, if the undersigned concluded one or both of the bilateral syndromes with which Teel was diagnosed arose out of and in the course of his employment with John Deere. While Teel continues to experience symptoms, the weight of the evidence supports the parties' stipulation and establishes he has reached MMI for his bilateral carpal tunnel syndrome. Because Teel has reached MMI and permanent disability can be determined, it is appropriate to consider whether Teel has sustained a permanent impairment caused by his bilateral carpal tunnel syndrome. See Iowa Code § 85.34(2).

Prior to the 2017 amendments, the Iowa Workers' Compensation Act authorized the agency to consider all evidence and to use its expertise when determining an injured employee's permanent disability due to a work injury. See, e.g., Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 421 (Iowa 1994). Then the legislature amended the statute to limit how the agency makes a determination of permanent functional impairment:

In all cases of permanent partial disability described in paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers’ compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity

Iowa Code § 85.34(2)(x).

In this case, Teel sustained a work injury to both arms in the form of carpal tunnel syndrome. Thus, the new limitations on how the agency determines functional impairment govern. The agency may not use lay testimony or agency expertise. The agency may only determine the extent of functional loss based on an impairment rating determined by using the Fifth Edition of AMA Guides, which has been adopted by the Commissioner pursuant to chapter 17A.

Teel contends he has sustained a permanent impairment of 17 percent to each arm. But he has not supported this contention with an expert medical opinion, let alone one that used the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment. No doctor used the Fifth Edition of the AMA Guides to determine Teel sustained a 17 percent functional impairment to each of his arms caused by his bilateral carpal tunnel syndrome.

Therefore, Teel has not satisfied his burden of proof on permanent disability. The evidence does not establish it is more likely than not he has sustained any permanent disability caused by his bilateral carpal tunnel syndrome under the requirements of Iowa Code section 85.34(2)(x). Teel is not entitled to any permanent partial disability (PPD) benefits relating to his bilateral carpal tunnel syndrome.

6. Temporary Disability.

Temporary workers’ compensation benefits compensate an employee for lost wages until the employee is able to return to work. See Mannes v. Fleetguard, Inc., Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009). An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1); see also Evenson v. Winnebago Indus. Inc., 881 N.W.2d 360, 373 (Iowa 2016). Whether an employee’s injury causes a permanent disability dictates whether the employee’s temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id.

Because Teel did not establish permanent disability caused by his bilateral carpal tunnel syndrome, the issue is whether he is entitled to TTD benefits from July 26, 2018, through September 3, 2018, and from December 19, 2018 through February 11, 2019. The evidence establishes Teel was completely off work during these two time periods due to recovery from surgical procedures relating to his carpal tunnel syndrome. Teel is therefore entitled to TTD benefits, subject to the stipulated credit.

7. Penalty.

“Because penalty benefits are a creature of statute, our discussion begins with an examination of the statutory parameters for such benefits.” Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005). Under Iowa Code section 86.13(4)(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.

This provision “codifies, in the workers’ compensation insurance context, the common law rule that insurers with good faith disputes over the legal or factual validity of claims can challenge them, if their arguments for doing so present fairly debatable issues.” Covia v. Robinson, 507 N.W.2d 411, 412 (Iowa 1993) (citing Dirks v. Farm Bureau Mut. Ins. Co., 465 N.W.2d 857, 861 (Iowa 1991) and Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988)). “The purpose or goal of the statute is both punishment and deterrence.” Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 237 (Iowa 1996).

The legislature established in Iowa Code section 86.13(4)(b) a burden-shifting framework for determining whether penalty benefits must be awarded in a workers’ compensation case. See 2009 Iowa Acts ch. 179, § 110 (codified at Iowa Code § 86.13(4)(b)); see also Pettengill v. Am. Blue Ribbon Holdings, LLC, 875 N.W.2d 740, 746–47 (Iowa App. 2015) as amended (Feb. 16, 2016) (discussing the burden-shifting required by the two-factor statutory test). The employee bears the burden to establish a prima facie case for penalty benefits. See Iowa Code § 86.13(4)(b). To do so, the employee must demonstrate a denial, delay in payment, or termination of workers’ compensation benefits. Iowa Code § 86.13(4)(b)(1). If the employee fails to prove a denial, delay, or termination, there can be no award of penalty benefits and the analysis stops. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747. However, if the employee makes the requisite showing, the burden of proof shifts to the employer. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747.

As discussed above, Teel was entitled to TTD benefits for the time he missed from work following the surgical procedures he underwent. John Deere had paid no

benefits as of the time of hearing. This constitutes a denial that caused a delay. So, the burden shifts to John Deere.

To avoid an award of penalty benefits, the employer must “prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.” Iowa Code § 86.13(4)(b)(2). An excuse must meet all of the following criteria to be “a reasonable or probable cause or excuse” under the statute:

(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.

Id. § 86.13(4)(c).

This paragraph creates a mandatory timeline for the employer to follow in showing it had a “reasonable or probable cause or excuse” for the termination of benefits. Iowa Code § 86.13(4)(c) (1)–(3). First, the employer's excuse for the termination must have been *preceded* by an investigation. *Id.* § 86.13(4)(c)(1). Second, the results of the investigation were “*the actual basis ... contemporaneously*” relied on by the employer in terminating the benefits. Third, the employer “*contemporaneously* conveyed the basis for the ... termination of benefits to the employee *at the time of the ... termination.*” *Id.* § 86.13(4)(c)(3)

Pettengill, 875 N.W.2d at 747 (emphasis in original). “An employer cannot unilaterally decide to terminate an employee's benefits without adhering to Iowa Code section 86.13; to allow otherwise would contradict the language of that section.” *Id.*

“A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Keystone Nursing Care Ctr., 705 N.W.2d at 307 (quoting Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996)). A claim may be fairly debatable because of a good faith legal or factual dispute. See Covia, 507 N.W.2d at 416 (finding a jurisdictional issue fairly debatable because there were “viable arguments in favor of either party”). “[T]he reasonableness of the employer’s denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer’s position that no benefits were owing.” Keystone Nursing Care Ctr., 705 N.W.2d at 307–08.

John Deere communicated its decision to deny Teel's claim for benefits in a written letter provided to Teel contemporaneously with its decision. Further, as the letter explains, John Deere based its decision on the medical opinion of Dr. Diegnan. After that, Dr. Mann filled out Teel's application of disability benefits from John Deere and indicated the conditions necessitating surgery were not work related. These were the only medical opinions on the question until the reports from Drs. Kreiter and Allen. But even after those opinions on the cause of Teel's carpal tunnel syndrome, the question of whether Teel's condition arose out of and in the course of his employment with John Deere was fairly debatable because of Dr. Diegnan's opinion and the disability benefits paperwork filled out by Dr. Mann indicating Teel's conditions were not work related. Therefore, John Deere has met its burden to establish "reasonable or probable cause or excuse," and no penalty benefits are awarded.

8. Care.

The hearing report identifies Teel's entitlement to alternate care under Iowa Code 85.27 as an issue. Teel contends he is entitled to alternate care under Iowa Code section 85.27 because John Deere unreasonably denied care. John Deere did not address the issue of care in its brief.

Iowa Code section 85.27(1) states:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

Because Teel's bilateral carpal tunnel syndrome arose out of and in the course of his employment, John Deere must furnish reasonable care and reasonably necessary transportation to such care for the condition. Even though Teel had reached MMI at the time of hearing, this includes potential ongoing care relating to Teel's bilateral carpal tunnel syndrome.

9. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 846 (Iowa 2015) (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Under the administrative rules governing contested case proceedings before the agency, hearing costs include filing fees. 876 IAC 4.33.

Here, Teel seeks taxation of the filing fee of one hundred dollars (\$100.00) to initiate this case before the agency. Because Teel prevailed on multiple disputed issues, taxation of this cost is appropriate. John Deere shall reimburse Teel the cost of the filing fee.

CONCLUSION

It is therefore ordered:

- 1) Teel shall take no permanent disability benefits.
- 2) John Deere shall pay to Teel temporary total disability (TTD) benefits at the rate of seven hundred four and 93/100 dollars (\$704.93) per week for 13.286 weeks, subject to the stipulated credit.
- 3) John Deere shall be given credit for sick pay/disability benefits previously paid for the stipulated amount of seven thousand seven hundred forty-four and 60/100 dollars (\$7,744.60).
- 4) John Deere shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.
- 5) John Deere shall pay no penalty.
- 6) John Deere shall hold Teel harmless for care relating to his bilateral carpal tunnel syndrome.
- 7) John Deere shall pay to Teel one hundred and 00/100 dollars (\$100.00) for the filing fee as a taxed cost under rule 876 IAC 4.33.
- 8) John Deere shall file subsequent reports of injury as required by agency rule 876 IAC 3.1(2).

Signed and filed this 8th day of July, 2021.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert Rosenstiel (via WCES)

Troy Howell (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.