BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ISMETA DELIC, Claimant, vs. SECOND INJURY FUND OF IOWA, Defendant.	:	File No. 1663264.02 ARBITRATION DECISION Headnotes: 3200; 3202; 3203

STATEMENT OF THE CASE

The claimant, Ismeta Delic, filed a petition for arbitration seeking workers' compensation benefits from the Second Injury Fund of Iowa ("Fund"). Randall Schueller appeared on behalf of the claimant. Meredith Cooney appeared on behalf of the defendant.

The matter came on for hearing on November 17, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibit 1-6, Claimant's Exhibit 1-6, and Defendant's Exhibits AA-DD. The exhibits were received and admitted into the record without objection.

The claimant testified on her own behalf with the assistance of interpreter Karmela Loftus. Roxann Zuniga was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on January 20, 2023, after briefing by the parties.

STIPULATIONS

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

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

2. The claimant sustained an injury, which arose out of, and in the course of, employment on March 13, 2019.

3. That, at the time of the alleged injury, the claimant's gross weekly earnings were one thousand two hundred seventy-nine and 00/100 dollars ($1,279.00),

that the claimant was single, and entitled to one exemption. This provided the claimant with a weekly compensation rate of seven hundred fifty-five and 59/100 dollars ($755.59).

The defendants waived their affirmative defenses. Entitlement to temporary disability and/or healing period benefits is no longer in dispute. Medical benefits are no longer in dispute.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent partial disability benefits, should any be awarded.

2. With regard to Fund benefits:

    a. Whether the claimant sustained a prior qualifying loss to the left lower extremity on July 1, 2018.
    b. Whether the functional loss from the alleged prior qualifying loss is 2 percent of the left lower extremity.
    c. Whether the claimant sustained a compensable loss to the right upper extremity on March 13, 2019.
    d. Whether the functional loss from the alleged second qualifying loss is 4 percent of the right upper extremity.

FINDINGS OF FACT

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

Ismeta Delic, the claimant, was 50 years old at the time of the hearing. (Testimony). She grew up, and achieved an eighth grade education in Doboj, Bosnia. (Testimony). In 1997, due to a war in Bosnia, she emigrated to the United States of America. (Testimony). She settled in Des Moines, Iowa, where she still lived at the time of the hearing. (Testimony). After moving to the United States of America, she did not have any additional education. (Testimony).

Upon arriving in the United States of America, the claimant found a job at IBP. (Testimony). IBP was a meat packing plant. (Testimony). She worked on machines that separated meat from bone. (Testimony). She only worked there for about one month because she worked second shift, had a small child at home, and the factory was located far from her home. (Testimony).

She then found a job with a ceramic company in Adel, Iowa. (Testimony). She cut tile with a machine. (Testimony). She worked that job for 18 months; however, it was too far from her home, so she eventually left that job. (Testimony).

In 1999, she started a job with Titan Tire. (Testimony). She cleaned finished tires, trimmed rubber off of completed tires with a large knife, and pushed them down the line. (Testimony; Claimant's Exhibit 3:5). She worked, on average, 60 hours per week, and earned, on average thirty-five and 00/100 dollars ($35.00) per hour. (Testimony). She worked there for 20 years before her termination in August of 2021. (Testimony). She testified that her job at Titan ended due to her injuries to her left knee, right shoulder, and right arm. (Testimony). She claimed that she could no longer squat or bend her knee, and she could no longer use her right arm. (Testimony). She testified that she provided Titan Tire with her restrictions upon attempting to return to work, and she was told that they could not accommodate her. (Testimony).

Ms. Delic testified that she was pushing a 1,000-pound tire when she heard a snap in her left knee, which "stopped [her] in [her] tracks." (Testimony).

Ms. Delic went to Capital Orthopaedics on March 12, 2019, for a visit with William Jacobson, M.D. (Joint Exhibit 1:1-4). She complained of left knee pain, and noted that she was injured four years prior. (JE 1:1). She recounted that her left knee popped and would give out. (JE 1:1). She had pain when she kneeled, squatted, and climbed stairs. (JE 1:1). Dr. Jacobson found Ms. Delic to have full extension with her left leg. (JE 1:2). Dr. Jacobson reviewed x-rays of the left knee, which showed "some slight lateral subluxation of the patella" along with mild irregularity over the medial femoral condyle. (JE 1:2). Dr. Jacobson ordered an MRI to rule out a meniscal tear. (JE 1:2).

On March 13, 2019, Ms. Delic felt pain in her right shoulder and right arm. (Testimony). She testified that her job was "very physical" involving her right arm. (Testimony). She reported her injury to Titan, and Titan accepted her right arm and right shoulder complaints as work-related. (Testimony). They authorized and chose certain medical treatment for her. (Testimony). She had treatment, and eventually resolved her right arm case with Titan via settlement. (Testimony).

The claimant saw Steven Aviles, M.D., at Iowa Ortho on March 25, 2019. (JE 2:1-4). Ms. Delic told Dr. Aviles that she worked for Titan for 20 years, and around March 13, 2019, she developed pain in her anterior right shoulder, which radiated to the posterior right shoulder. (JE 2:1). She rated her right shoulder pain 5 out of 10. (JE 2:1). She described the pain as constant, fluctuating, aching, and sharp. (JE 2:1). She described her job as cutting excess rubber off of tires using a knife. (JE 2:1). She would sometimes work overhead, and sometimes work at shoulder level. (JE 2:1). She noted that she also sometimes pushed and pulled tires down a conveyor belt. (JE 2:1). She displayed normal strength in her right shoulder, but she had painful range of motion. (JE 2:2). Certain testing produced pain that radiated up her right arm into her outer right shoulder. (JE 2:2). X-rays of the shoulder showed no evidence of glenohumeral arthritis, but did show mild AC joint arthritis. (JE 2:2). Dr. Aviles opined that the examination was "consistent with biceps pathology," and recommended that she have an MR arthrogram of her right shoulder. (JE 2:2). Dr. Aviles allowed her to return to work with no restrictions, but noted, "[i]f she wishes to have restrictions then I would be happy to provide for her [*sic*]." (JE 2:3-4). He diagnosed Ms. Delic with pain in the right shoulder and pain in the limb. (JE 2:2).

Ms. Delic reported to Capital Orthopaedics for an MRI of her left knee on March 27, 2019. (JE 3:1). Kraig Kirkpatrick, M.D., reviewed the MRI, and opined that the claimant had a radial tear in the posterior horn of the medial meniscus along with interstitial and cystic degeneration of the ACL. (JE 3:1). The ACL was not ruptured, according to Dr. Kirkpatrick. (JE 3:1).

John Rayburn, M.D., treated Ms. Delic on April 1, 2019. (JE 5:1-3). Dr. Rayburn injected the contrast into the claimant's right shoulder for an MR arthrogram. (JE 5:1-3). There was no vascular uptake of the contrast solution. (JE 5:2). He provided Ms. Delic with no additional restrictions. (JE 5:3).

On April 8, 2019, Ms. Delic returned to Dr. Aviles' office complaining of continued right shoulder pain which radiated to her right elbow. (JE 2:5-8). She also complained of numbness and tingling in her arms. (JE 2:5). Dr. Aviles reviewed the findings of the MR arthrogram with Ms. Delic. (JE 2:6). He opined that the MRI showed a possible tear of the claimant's biceps, but an intact superior labrum. (JE 2:6). Dr. Aviles also observed a partial rotator cuff tear on the bursal side, along with impingement at the anterolateral acromion. (JE 2:6). Dr. Aviles diagnosed the claimant with pain of the right shoulder, an incomplete tear of the right rotator cuff, and a biceps tendon tear. (JE 2:6). Dr. Aviles opined that Ms. Delic could benefit from a right shoulder arthroscopy, rotator cuff repair, biceps tenotomy, and possible subacromial decompression. (JE 2:6). Dr. Aviles returned the claimant to work without restrictions "in the meantime." (JE 2:6, 8).

Ms. Delic returned to Dr. Jacobson's office at Capital Orthopaedics to review the findings of a left knee MRI on April 9, 2019. (JE 1:5-8). Dr. Jacobson opined that the MRI showed a radial tear of the posterior horn of the medial meniscus adjacent to the root of the ligament. (JE 1:6). It also showed degeneration of the ACL, but no rupture. (JE 1:6). Dr. Jacobson discussed surgical options with Ms. Delic, and she indicated that she was preparing for an operation on her shoulder. (JE 1:6). She told Dr. Jacobson that she would like to recover from her shoulder surgery first before proceeding with surgical intervention for her left knee issues. (JE 1:6).

On April 25, 2019, Dr. Aviles issued another work status report, which took Ms. Delic off work for five days. (JE 2:9). He allowed her to type and write with her right hand. (JE 2:9). He also prescribed physical therapy. (JE 2:10).

Ms. Delic returned for another post-surgical follow-up visit with Dr. Aviles on May 8, 2019. (JE 2:11-13). She complained of achy pain in her right shoulder which she rated 6 out of 10. (JE 2:11). Dr. Aviles noted that the claimant was "doing well" with physical therapy. (JE 2:11). Dr. Aviles recommended she continue physical therapy and return in four weeks for re-examination. (JE 2:12). He allowed Ms. Delic to return to work modified duty, which included no use of her right arm. (JE 2:13).

On June 10, 2019, Ms. Delic reported to Dr. Aviles' office for another post-operative follow-up visit. (JE 2:14-17). She rated her pain 0 out of 10, and Dr. Aviles opined that she seemed to be doing well. (JE 2:14). She complained of some pain with overhead activity, which was accompanied by some popping. (JE 2:14). Dr. Aviles said that he was not concerned about the popping. (JE 2:14). Dr. Aviles requested that she

return in six weeks. (JE 2:15). He provided her with a two-pound lifting restriction and also restricted her from working above her shoulder level while at work. (JE 2:15, 17).

Dr. Aviles examined the claimant again on July 22, 2019, for her right shoulder issues. (JE 2:18-21). Ms. Delic indicated that she had constant pain in her right shoulder, which she rated 2-3 out of 10. (JE 2:18). Ms. Delic noted she had not been doing her home exercises, and that working around her house was going to serve as her exercise. (JE 2:18). Dr. Aviles demonstrated the proper exercises to Ms. Delic, and explained to her that there was a difference between working around the house and performing formal exercises to restore her motion. (JE 2:18-19). She displayed stiffness in forward elevation and internal rotation, which Dr. Aviles attributed to her not doing any work at home. (JE 2:19). Dr. Aviles noted, "I advised her to dedicate every waking minute of her day towards getting motion back." (JE 2:19). Dr. Aviles allowed the claimant to continue working modified work, restricted her to lifting 10 pounds, and continued to preclude her from working above shoulder level. (JE 2:21).

Ms. Delic followed-up with Dr. Aviles on September 4, 2019, for her continued mild right shoulder pain. (JE 2:22-25). She described her pain as aching, and noted that rest relieved it. (JE 2:22). Dr. Aviles noted that the claimant had no pain and full range of motion upon examination. (JE 2:22). Dr. Aviles recommended additional work conditioning with therapy. (JE 2:23). He requested that she return in three weeks. (JE 2:23). Dr. Aviles provided the claimant with a 20-pound lifting restriction, and recommended she avoid repetitive work above the shoulder level. (JE 2:25).

On September 25, 2019, Ms. Delic saw Dr. Jacobson's office for her left knee issues. (JE 1:9-15). Ms. Delic reported muscle aches, muscle weakness, and joint pain. (JE 1:12). Dr. Jacobson discussed treatment options available to Ms. Delic, including a left knee arthroscopy with a partial medial meniscectomy. (JE 1:13). Ms. Delic expressed an interest in proceeding with surgery for her left knee issues. (JE 1:13).

Also on September 25, 2019, Ms. Delic visited with Dr. Aviles. (JE 2:26-29). Ms. Delic rated her pain 0 out of 10. (JE 2:26). She also indicated that her pain occurred rarely. (JE 2:26). Dr. Aviles observed that the claimant had "excellent motion." (JE 2:26). Dr. Aviles placed the claimant at maximum medical improvement ("MMI"), and allowed her to return to activities "as tolerated." (JE 2:27). He also opined that she required no work restrictions or further treatment. (JE 2:27, 29).

Ms. Delic acknowledged that Dr. Aviles, who performed her surgery, released her to return to work without any restrictions on September 25, 2019. (Testimony). While she was cleared to return to work, she only returned for a short period of time before using her vacation days ahead of her left knee surgery. (Testimony).

Ms. Delic reported to West Lakes Surgery Center on October 9, 2019, for a left knee arthroscopic surgery. (JE 1:16-17). Dr. Jacobson performed a partial medial meniscectomy, and a chondroplasty of the patella to the left knee. (JE 1:16).

On October 18, 2019, Dr. Jacobson visited with Ms. Delic for her first post-operative visit. (JE 1:18-20). Ms. Delic reported doing well and taking analgesics and

anti-inflammatories on an as-needed basis. (JE 1:18). She also walked without crutches. (JE 1:18).

Ms. Delic saw Dr. Jacobson again on December 6, 2019, for continued follow-up of her left knee issues. (JE 1:21-26). She continued performing physical therapy as instructed, but noted pain to the medial aspect of the knee. (JE 1:24). Dr. Jacobson opined that Ms. Delic made good progress following her surgery. (JE 1:25). He recommended that she continue to pursue physical therapy to improve her range of motion and strengthening. (JE 1:25).

On January 10, 2020, Ms. Delic returned to Dr. Jacobson's office for another follow-up examination. (JE 1:27-32). Ms. Delic finished physical therapy, but noted continued pain and swelling in her left knee. (JE 1:30). Dr. Jacobson observed that Ms. Delic's pain was mostly muscular. (JE 1:31). Dr. Jacobson provided the claimant with a corticosteroid injection in order to treat the muscle issues. (JE 1:31). Dr. Jacobson released Ms. Delic from his care effective January 10, 2020, and noted no restrictions for her. (JE 1:32).

The claimant reported to MercyOne Urbandale Family Medicine Clinic on January 14, 2020, for examination by Ron Pick, D.O. (JE 6:1-3). The claimant complained of left knee pain, right shoulder pain, depression, and headaches. (JE 6:1). After returning to work with no restrictions, she was having pain in her medial left knee, along with swelling and calf tenderness. (JE 6:1). She also complained of increasing right shoulder pain. (JE 6:1). Her depression also increased, as she reported feeling "down all the time." (JE 6:1). Upon examination, Dr. Pick noted the claimant to have pain with range of motion in her left knee. (JE 6:2). She also displayed reduced range of motion in her right shoulder with pain. (JE 6:2). An ultrasound of the right leg showed no signs of DVT. (JE 6:3). Dr. Pick provided the claimant with a note to take her off work for the next week, and recommended that she return to see her "work comp physician for her right shoulder." (JE 6:3).

Dr. Jacobson examined Ms. Delic again on January 21, 2020. (JE 1:36-38). Ms. Delic told Dr. Jacobson that the cortisone injection did not provide her with much relief. (JE 1:36). She continued to complain of muscle aches and weakness, along with joint pain. (JE 1:36). New x-rays were ordered, which showed no acute issues, as well as a well-maintained medial compartment space. (JE 1:37). Other examinations showed no evidence of deep venous thrombosis. (JE 1:37). Dr. Jacobson recommended another MRI of the left knee. (JE 1:37). Dr. Jacobson provided the claimant with another work release. (JE 1:37).

Ms. Delic had another MRI of her left knee at Capital Orthopaedics on January 23, 2020. (JE 3:2-3). Dr. Kirkpatrick opined that the MRI showed the results of the partial medial meniscectomy adjacent to the meniscotibial root "with mild medial subluxation of the meniscal body," distal degeneration of the ACL without a rupture, and "[s]tatus post chondroplasty of the lateral patellar facet…" with no unstable or displaced fragment. (JE 3:2-3).

On January 28, 2020, Ms. Delic returned to Dr. Jacobson's office to review the results of the MRI. (JE 1:42-44). She had full extension when Dr. Jacobson measured

her range of motion in her left knee. (JE 1:42). She continued to complain of left knee pain. (JE 1:42). The MRI showed the results of the prior surgery, minimal patellofemoral chondromalacia, and no significant chondromalacia of the medial compartment. (JE 1:42). Dr. Jacobson indicated that there were no surgical options for her symptoms, and that her symptoms seemed to stem from chondromalacia and early osteoarthritis. (JE 1:43). Dr. Jacobson recommended that Ms. Delic use ice and anti-inflammatories. (JE 1:43). He also ordered viscosupplementation for the left knee. (JE 1:43). Dr. Jacobson provided a "new work note," which limited Ms. Delic to four-hour workdays. (JE 1:43).

Ms. Delic continued her left knee care with Dr. Jacobson on February 14, 2020. (JE 1:49-50). Dr. Jacobson administered a Euflexxa injection into the claimant's left knee as a viscosupplementation. (JE 1:49). Dr. Jacobson noted that this was the first of three injections. (JE 1:50).

Ms. Delic returned to Dr. Jacobson's office one week later on February 21, 2020, for a second Euflexxa injection into her left knee. (JE 1:55).

The claimant returned again on February 28, 2020, for her final Euflexxa injection into her left knee. (JE 1:61-62). She felt a 30 percent improvement in her symptoms following the first two injections. (JE 1:62). She hoped to improve further. (JE 1:62).

There was some confusion during the claimant's testimony. She testified that she returned to work with a note from Dr. Jacobson indicating that she could only work for four hours. (Testimony). However, there is an indication that Dr. Jacobson released her to work with no restriction. (Testimony). The record provided in Joint Exhibit 1:43 provides a "new work note" limiting Ms. Delic to four-hour workdays. (JE 1:43).

There is a note of March 9, 2020, from Dr. Jacobson indicating that Ms. Delic could return to work with no restrictions. (CE 1:4). She also was to return as needed, and required no further scheduled treatment. (CE 1:4). Dr. Jacobson placed Ms. Delic at maximum medical improvement ("MMI") effective January 10, 2020. (CE 1:4).

On June 3, 2021, Ms. Delic reported to the office of Sunil Bansal, M.D., M.P.H., for an independent medical examination ("IME"). (CE 1:1-13). The claimant described Dr. Bansal as a "very, very kind man," who examined her and "listened to everything that [she] had to say." (Testimony). She spent two to three hours with Dr. Bansal for her examination. (Testimony). Dr. Bansal issued a report based upon the findings of his examination of Ms. Delic on June 29, 2021. (CE 1:1-13). He began the report by reviewing the claimant's medical care. (CE 1:1-7). He then noted that Ms. Delic used her left knee quite often. (CE 1:7). Dr. Bansal noted, "[o]ver time her knee became painful and swollen, and difficult to bend." (CE 1:7). She told her supervisor, "but continued working in the same position." (CE 1:7). This differs from her testimony provided at the arbitration hearing, wherein she indicated that she felt a sudden pop in her knee. (Testimony). She then reported an injury to her right shoulder on March 13, 2019, "due to her physically demanding work and repetitive movement." (CE 1:8). She noted right shoulder pain for "a few weeks" prior to reporting her issues. (CE 1:8). On March 13, 2019, she was unable to perform stretching exercises prior to beginning her workday. (CE 1:8).

Ms. Delic described her job with Titan as an assembly line position wherein she trimmed large tires using her right arm in a circular motion. (CE 1:8). She also had to push tires and perform some overhead lifting. (CE 1:8). If a tire was flat, she would kneel to patch the leak. (CE 1:8). She also performed quality control inspections on tires weighing up to 800 pounds. (CE 1:8). She was not working at the time of the examination, and told Dr. Bansal that she was on work restrictions which included a four-hour workday after her knee surgery. (CE 1:8). Ms. Delic told Dr. Bansal that Titan informed her that "they could not offer her part-time employment." (CE 1:8).

At the time of the examination, Ms. Delic told Dr. Bansal that her left knee pain had improved since her surgery. (CE 1:8). However, if she walked "a lot," she still experienced pain. (CE 1:8). Walking down stairs or a hill continued to be the most painful experience. (CE 1:8). She opined that she could stand or walk for 30 minutes, but that walking for one hour would be "difficult." (CE 1:8). Her right shoulder pain continued, and radiated into her neck, shoulder blade, and right arm. (CE 1:8). At times, the last two or three fingers of her right hand went numb. (CE 1:8). She had pain and stiffness when reaching overhead or behind her back. (CE 1:8). She could lift a gallon of milk, which she could not do prior to her surgery. (CE 1:8).

Upon physical examination of her right shoulder, Dr. Bansal found the claimant to have tenderness to palpation, especially around the acromioclavicular joint. (CE 1:8). Dr. Bansal performed range of motion testing on Ms. Delic's right shoulder, and found the following range(s) of motion:

Flexion:	166, 166, and 168 degrees
Abduction:	159, 160, and 163 degrees
Adduction:	29, 31, and 28 degrees
External Rotation:	83, 79, and 78 degrees
Extension:	39, 38, and 40 degrees
Internal Rotation:	55, 55, and 58 degrees

(CE 1:9). Dr. Bansal also noted that the claimant had tenderness over the mid and distal biceps. (CE 1:9). She had a 20 percent loss of elbow flexion strength compared to the left arm, but had full range of motion of the right arm. (CE 1:9). Dr. Bansal also performed comparison range of motion testing to the left arm and shoulder. (CE 1:9). Dr. Bansal turned to the left knee and found positive valgus stressing upon examination. (CE 1:9). She also had "+2 crepitus" along with medial joint line and anterior tenderness. (CE 1:9). Finally, Dr. Bansal observed that the claimant had a full range of motion in her left knee. (CE 1:9).

Dr. Bansal diagnosed the claimant's right shoulder issues as a right shoulder rotator cuff tear, bursal-sided partial thickness, status post right shoulder arthroscopy with rotator cuff repair. (CE 1:10). Dr. Bansal diagnosed Ms. Delic with a right biceps tendon tear. (CE 1:10). With regard to the left knee, Dr. Bansal listed his diagnoses as follows: "[l]eft knee medial meniscus tear and chondromalacia patella. Status post left knee arthroscopy with partial medial meniscectomy and chondroplasty of the patella." (CE 1:10).

Dr. Bansal opined that Ms. Delic sustained "a cumulative overuse injury to her right shoulder" as a result of her job duties at Titan. (CE 1:11). In Dr. Bansal's view, Ms. Delic worked jobs at Titan that stressed her rotator cuff and included duties such as "repetitive reaching and pushing and pulling heavy weights at and above shoulder level." (CE 1:11). These same duties also stressed the biceps and caused it to bear a heavy mechanical load, the result of which was a tendon tear, according to Dr. Bansal. (CE 1:12). Finally, Dr. Bansal opined that Ms. Delic's job duties placed "considerable stress" on her left knee, especially due to repetitive kneeling. (CE 1:12). According to Dr. Bansal, this aggravated Ms. Delic's meniscus and chondromalacia "from the localized chondrocyte destruction," which necessitated the surgical repair. (CE 1:12).

Next, Dr. Bansal's report provides an impairment rating for various parts of Ms. Delic's body based upon his examination. (CE 1:12). Based upon the ranges of motion of Ms. Delic's right shoulder noted above, Dr. Bansal found the claimant to have a 6 percent upper extremity impairment. (CE 1:12). He used Figures 16-40 through 16-46 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition to arrive at the above impairment. (CE 1:12). The Guides equated this to a 4 percent whole person impairment. (CE 1:12). For the right biceps, Dr. Bansal provided Ms. Delic with a 4 percent permanent impairment to the right upper extremity for a 20 percent elbow flexion loss strength secondary to a biceps tendon tear. (CE 1:12). This was based upon Table 16-35, and converted to a 2 percent whole person impairment. (CE 1:12). Finally, for the left knee, Dr. Bansal opined that the claimant had a 2 percent lower extremity impairment, or a 1 percent whole person impairment. (CE 1:12). This was based upon Table 17-33, and the treatment provided to the claimant. (CE 1:12).

Dr. Bansal agreed with Dr. Aviles that the claimant achieved MMI for her right shoulder and biceps on September 25, 2019. (CE 1:10). He also agreed with Dr. Jacobson that Ms. Delic's left knee reached MMI on January 10, 2020. (CE 1:10). He opined that the claimant should have permanent restrictions as provided in a June 27, 2021, FCE. (CE 1:13). The FCE is not included in evidence, and is quoted by Dr. Bansal as follows:

> Date of service June 27, 2021. Functional capacity evaluation.
>
> SUMMARY: Ms. Delic gave consistent effort with all test items, and provided valid effort. Due to the decreased strength and endurance of her right shoulder and left knee, it is recommended that her capabilities are in the sedentary to light category (up to 15 to 20 pounds on an occasional basis at waist level) of physical demand. It is recommended that she limit elevated work and/or reaching at shoulder height and higher with material and nonmaterial handling activities to an occasional basis. It is recommended that she limit walking and standing work combined to 50% of the day (at self-selected paces and being able to sit as needed). She ambulates with an altered gait, with an antalgic limp on her left leg.

(CE 1:13). Dr. Bansal recommended intermittent steroid injections to the claimant's right shoulder for "maintenance." (CE 1:13). He also recommended that the claimant perform stretching and strengthening exercises for her right biceps. (CE 1:13). Finally,

for the left knee, Dr. Bansal recommended periodic viscosupplementation and/or steroid injections due to the claimant's predisposal to post-traumatic arthritis. (CE 1:13).

Charles Wenzel, D.O., J.D., M.P.H., C.I.M.E., C.L.C.P., examined the claimant for the purposes of an IME on June 23, 2021. (Defendant's Exhibit AA:1-15). Dr. Wenzel issued a report on June 29, 2021, which contained the findings of his examination. (DE AA:1-15). Dr. Wenzel is board certified in occupational and environmental medicine, and is a certified independent medical examiner. (DE AA:14). Ms. Delic recounted the details of her job with Titan. (DE AA:1-2). The heaviest items that Ms. Delic lifted were tires weighing about 60 to 70 pounds, but the typical tire weighed 40 to 50 pounds. (DE AA:1). She spent about one-third of her day working from the floor to the waist, another one-third working from her waist to her shoulder, and another one-third working at or above shoulder height. (DE AA:1). She also constantly stood, squatted, bent, knelt, and used vibratory tools. (DE AA:2). She frequently walked and occasionally crawled. (DE AA:2).

The claimant told Dr. Wenzel that she began to develop left knee pain before 2015, but could not recount a specific injury that precipitated her pain. (DE AA:2). She remembered that her left knee hurt and popped "frequently." (DE AA:2). Ms. Delic remembered a specific incident on July 1, 2018, when she was working with an 800-pound tire, turned it, and felt her left knee "snap." (DE AA:2). With regard to her right shoulder, she told Dr. Wenzel that she developed right shoulder pain prior to March 13, 2019, but "did not remember when and did not remember a specific inciting event." (DE AA:4). Dr. Wenzel noted the March 13, 2019, report by Ms. Delic that she began to have difficulty reaching overhead with her right arm during daily work stretching exercises. (DE AA:4). Dr. Wenzel noted Dr. Aviles' 1 percent upper extremity impairment rating as assigned on November 27, 2019. (DE AA:5).

Ms. Delic told Dr. Wenzel that she had right-sided neck pain, which she rated 4 out of 10. (DE AA:6). This pain was "much worse than her right shoulder pain" despite her rating them similarly. (DE AA:6). She rated her shoulder pain 4-5 out of 10. (DE AA:6). Her right shoulder pain was stabbing and burning and radiated to her neck. (DE AA:6). She indicated that it occurred three times per week, and worsened during rainy weather. (DE AA:6). She rated her left knee pain 5 to 6 out of 10, and told Dr. Wenzel that it occurred constantly. (DE AA:6). Her left knee pain increased if she walked for more than two miles. (DE AA:6). She also disclosed a burning sensation in her left foot. (DE AA:6).

The claimant told Dr. Wenzel that she had difficulty walking, going up and down stairs, squatting, lifting, pushing or pulling, and carrying more than 30 pounds. (DE AA:6). She could not take long walks or hikes due to her knee pain. (DE AA:7). At times, she had difficulty sleeping due to shoulder discomfort in certain sleeping positions. (DE AA:7). She noted that her symptoms had improved when compared with one year prior, and that she had no significant changes over the previous six months. (DE AA:6).

Upon physical examination, Dr. Wenzel observed that the claimant had no issues with grip strength or elbow strength. (DE AA:7). Ms. Delic had tenderness in her

acromioclavicular joint on the right side; however, she did not have pain with cross-arm adduction. (DE AA:7). A full can test and empty can test were positive on the right rotator cuff. (DE AA:7). Tests for biceps tendinopathy were negative bilaterally. (DE AA:8). Dr. Wenzel performed range of motion testing on the claimant's right shoulder, and found the following results:

Flexion:	140 degrees
Extension:	40 degrees
Abduction:	140 degrees
Adduction:	30 degrees
External Rotation:	85 degrees
Internal Rotation:	40 degrees

(DE AA:8). Upon examining her knee, Dr. Wenzel observed that the claimant had a normal gait, with a normal toe walk and a normal heel walk. (DE AA:8). Dr. Wenzel observed left-sided patellar and medial joint line tenderness in the left leg. (DE AA:8). Dr. Wenzel did not see any joint laxity, but noted pain with valgus stress on the left. (DE AA:8). In performing range of motion testing, Dr. Wenzel found the claimant to have 125 degrees of flexion with the left knee and 130 degrees in the right knee. (DE AA:8). Dr. Wenzel noted that anything over 110 degrees was within normal limits. (DE AA:8). Ms. Delic had 0 degrees of extension in both the right and left knee. (DE AA:8). Dr. Wenzel noted that 0 degrees was normal limits for this measurement. (DE AA:8).

Based upon his examination, and review of the records, Dr. Wenzel opined that the claimant had non-work-related neck pain, a right supraspinatus tear which was surgically repaired, non-work-related right upper extremity pain and paresthesia, non-work-related left knee medial meniscal tear and chondromalacia patella which were surgically repaired. (DE AA:9).

Dr. Wenzel proceeds to discuss causation for the alleged July 1, 2018, left knee injury, and the alleged March 13, 2019, right shoulder and arm injury. (DE AA:9-10). Dr. Wenzel notes that Ms. Delic could not explain why she made no complaint or mention of the left knee pain until March 12, 2019, which is over eight months after the alleged date of injury. (DE AA:9). She also could not explain to the doctor why she never mentioned the alleged July 1, 2018, work injury to any medical provider. (DE AA:9). She told Dr. Wenzel that she did not report the injury to her employer as she "felt that it would do no good." (DE AA:9). Based upon the foregoing, Dr. Wenzel opined that he could not state that a work injury occurred on July 1, 2018, nor did he find Ms. Delic's current complaints work related. (DE AA:9).

With regard to Ms. Delic's right arm and neck, Dr. Wenzel opined that Ms. Delic did not display radicular symptoms or neck pain during the time of her medical examinations. (DE AA:10). The right shoulder, according to Dr. Wenzel was "accepted," so Dr. Wenzel did not discuss any causation opinions before providing an impairment rating. (DE AA:10).

Dr. Wenzel agreed with Dr. Aviles' September 25, 2019, date for MMI. (DE AA:10). He recommended no additional treatment. (DE AA:10). Dr. Wenzel noted that Dr. Aviles performed a supraspinatus repair, and that the repair was in the arm side of the shoulder joint; however, Dr. Wenzel noted that the "engine" or muscle belly is on the torso side of the joint. (DE AA:11). Dr. Aviles also performed a subacromial bursectomy. (DE AA:12). This "lies under the acromion on top of the supraspinatus muscle," which acts as a cushion to reduce friction on the underlying supraspinatus muscle "as it moves the glenohumeral joint, which in turn moves the distal arm." (DE AA:12). Dr. Wenzel opined that some of the surgical scars are proximal to the shoulder joint, but others are not. (DE AA:12). Dr. Wenzel noted, "[i]n summary, Dr. Aviles performed, either on the torso side of the body or overlying the glenohumeral joint, a supraspinatus repair, and a subacromial bursectomy to restore proper function of the joint." (DE AA:13). In order to perform these surgeries, Dr. Aviles placed a surgical portal on the torso side of the body. (DE AA:13). Based upon the foregoing, Dr. Wenzel concluded that it was appropriate to provide a whole person impairment rating, rather than a shoulder impairment rating. (DE AA:13).

Dr. Wenzel used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in order to provide an impairment rating for Ms. Delic. (DE AA:13). Dr. Wenzel compared range of motion in the right shoulder to the uninjured left shoulder and found a 3 percent upper extremity impairment for the range of motion deficits. (DE AA:13). This is based upon Figures 16-40, 16-43, and 16-46 in the Guides. (DE AA:13). Dr. Wenzel used Table 16-3 on page 439 of the Guides to convert the 3 percent upper extremity impairment rating to a 2 percent whole person impairment rating. (DE AA:13).

Dr. Wenzel provided no restrictions for the claimant's left knee, as he opined that her issues with her left knee were not work-related. (DE AA:13). Dr. Wenzel opined that Ms. Delic should limit lifting with her right upper extremity to 30 pounds occasionally over her shoulder. (DE AA:13). She also should only occasionally work at or above shoulder height. (DE AA:13).

On June 29, 2021, Phil Davis, M.S., C.B.I.S., issued a vocational analysis. (CE 2:1-5). Mr. Davis holds himself out as a "Vocational Specialist," however no evidence of his credentials was provided in the record. (CE 2:1). As part of preparing his report, Mr. Davis reviewed a number of medical records, including an FCE, and an IME. (CE 2:1). Mr. Davis did not directly interview Ms. Delic in preparing his vocational report. (CE 2:1). Mr. Davis also reviewed Ms. Delic's vocational history. (CE 2:2). Mr. Davis noted that the June 27, 2021, FCE found the claimant to be limited to a sedentary to light physical demand level, with an ability to occasionally lift up to 15 to 20 pounds to waist level. (CE 2:3). Mr. Davis noted the following additional limitations in quoting from the FCE:

Slight to Some Limitation: Up to 50% of the day

1. Walking—at a self-selected pace
2. Standing work—at a self-selected pace

Some Limitations:

1. Elevated work
2. Forward bent standing
3. Kneeling/Half-Kneeling—if she is able to ½ kneel on her right knee
4. Reaching
5. Lifting waist to/from floor up to 15 lbs.
6. Lifting waist to/from crown up to 10 lbs.
7. Front carry up to 20 lbs. up to 50 ft.
8. Right arm overhead lift up to 3 lbs.

Significant Limitations:

1. Stairs
2. Lifting waist to/from floor up to 25 lbs.
3. Lifting waist to/from crown up to 15 lbs.
4. Front carry up to 30 lbs. up to 50 ft.
5. Right arm overhead lift up to 6 lbs.

Unable to perform:

1. Crouching

(CE 2:3). Mr. Davis continued by providing a "vocational analysis." (CE 2:4). Mr. Davis used the Dictionary of Occupational Titles, which lists certain categories of work ranging from sedentary to very heavy. (CE 2:4-5). Mr. Davis analyzed Ms. Delic's pre-injury employment activities, and noted that Ms. Delic's work history involved "production/factory occupations primarily falling within the medium to very heavy worker classification." (CE 2:5). All of her work, according to Mr. Davis, required her to have full use and range of motion in her upper and lower extremities. (CE 2:5). Based upon the opinions of Dr. Bansal and an FCE, Mr. Davis opined that Ms. Delic is restricted to performing work activities within the sedentary to light physical demand level. (CE 2:5). Mr. Davis opined that Ms. Delic could not return to any of her past employment endeavors based upon her restrictions. (CE 2:5). Mr. Davis also opined that Ms. Delic is now physically precluded 100 percent from performing "all of the essential functions of any of her past jobs based upon the permanent restrictions set forth by Dr. Bansal and in the valid FCE." (CE 2:5). Mr. Davis concluded that Ms. Delic had lost access to "greater than 90% of her pre-injury labor market and economy." (CE 2:5). Considering Mr. Davis never spoke to Ms. Delic, and did not engage in an in-depth discussion of Ms. Delic's qualifications, it is unclear how he could come to such a definitive conclusion.

Ms. Delic applied, and was awarded Social Security Disability benefits. (Testimony). The Social Security Administration determined that Ms. Delic became disabled on October 15, 2019. (CE 4:1-2). As the parties undoubtedly know, determinations of the Social Security Administration are not binding on this Agency.

Since leaving Titan, Ms. Delic has not worked anywhere. (DE DD:43). She has not tried to obtain a job anywhere, either. (DE DD:61).

The claimant indicated that she still has pain with prolonged standing, walking, and sitting. (CE 3:5). She also has pain and discomfort when she gets up after sitting or lying down for a prolonged period of time. (CE 3:5). She noted difficulty lifting, carrying groceries, doing yardwork, and doing household chores. (CE 3:5). She also indicated that she has difficulty playing with and lifting her grandchildren due to weakness in her right arm. (CE 3:5).

Ms. Delic brought claims against Titan for the above listed dates of injury. She entered into a compromise settlement with Titan pursuant to Iowa Code section 85.35(3) for the July 1, 2018, date of injury. (CE 5:1-3). As part of this settlement, Titan paid Ms. Delic thirty-nine thousand five hundred ninety-seven and 65/100 dollars ($39,597.65). (CE 5:1-3).

She filed a full commutation of all of her remaining benefits related to the March 13, 2019, date of injury with Titan. (CE 6:1-19). Based upon the opinions of Dr. Bansal, the parties settled the matter at a rate of 43.2 percent of the right upper extremity. (CE 6:1). However, there is no provider who opined that this is the appropriate impairment rating based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. The Commissioner granted the full commutation on September 30, 2021. (CE 6:19).

CONCLUSIONS OF LAW

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

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual, as if the individual had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

Iowa Code 85.64 governs Second Injury Fund liability. Before any liability of the Fund is triggered, three requirements must be met. These requirements are: 1. The employee must have lost or lost the use of a hand, arm, foot, leg, or eye (also known as a first qualifying injury or loss); 2. The employee must sustain a loss or loss of use of another specified member or organ through a compensable injury (also known as a second qualifying injury or loss); and, 3. Permanent disability must exist as to both the initial injury and the second injury.

The first requirement to trigger Fund liability is that the claimant must have lost, or lost the use of a hand, arm, foot, leg, or eye. As noted above, the burden remains with the claimant to prove, by a preponderance of the evidence, she suffered a first qualifying loss. It should be noted that a prior loss need not be traumatic in nature, nor must it arise out of, and in the course of employment. Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808, 816 (Iowa 1994).

Ms. Delic asserts in her petition and the hearing report that she injured her left knee on July 1, 2018. She testified at the hearing that she was pushing a 1,000 pound tire when she felt a snap or pop in her left knee which "stopped [her] in [her] tracks." I have some concerns with the evidence in the record as it relates to this issue and Ms. Delic's credibility. Ms. Delic saw her personal physician Dr. Pick several days after the alleged July 1, 2018, work injury, and made no complaints about pain to, or issues with, her left knee. She visited Dr. Pick again in November of 2018, seeking FMLA paperwork, and again made no comments as to her alleged knee pain. In February of 2019, she finally reported knee pain to Dr. Pick, but could not pinpoint a specific event.

It was not until a March 12, 2019, visit with Dr. Jacobson that Ms. Delic complained of left knee pain to a physician. She told Dr. Jacobson that she injured her left knee four years prior, and that it would pop and "give out." She also told Dr. Jacobson that she experienced pain when she knelt, squatted, and climbed stairs. Dr. Jacobson examined the claimant and found her to have full extension of her left leg; however, he ordered an MRI in order to rule out a meniscal tear.

The MRI showed a radial tear in the posterior horn of the medial meniscus along with interstitial and cystic degeneration of the ACL. Ms. Delic then stopped treatment for her left knee as she concentrated on treatment for injuries to her right shoulder and right upper extremity. By September of 2019, Ms. Delic resumed care for her left knee, and expressed an interest with proceeding with an arthroscopic surgery on her left knee. The surgery proceeded on October 9, 2019, wherein Dr. Jacobson performed a left partial medial meniscectomy and a chondroplasty of the patella.

Ms. Delic progressed through her recovery, and was discharged by Dr. Jacobson on January 10, 2020, with no work restrictions. Almost immediately after that, Ms. Delic returned to Dr. Pick's office wherein she complained of pain in her left knee and leg. She was sent for testing to rule out DVT and returned to Dr. Jacobson's office. She had a cortisone injection and another MRI. Following this, she had several viscosupplementation injections performed by Dr. Jacobson. Dr. Jacobson again discharged the claimant from care in March of 2020 with no work restrictions.

The claimant then saw Dr. Bansal for an IME. She told Dr. Bansal that "[o]ver time her knee became painful and swollen, and difficult to bend." Dr. Bansal noted in his report that the claimant told her supervisor about her left knee issue, "but continued working in the same position." She described her job as including performing tire inspections on tires that weigh up to 800 pounds. Ms. Delic told Dr. Bansal that Titan could not accommodate her restrictions of a four-hour workday. Dr. Bansal opined that repetitive kneeling placed stress on Ms. Delic's left knee, which aggravated her meniscus and chondromalacia. This is certainly a different description of injury, job description, and causation issues than previously provided by Ms. Delic.

Dr. Wenzel then examined the claimant for an IME, as arranged by the defendant. Ms. Delic recounted that the heaviest items that she lifted at Titan weighed 60 to 70 pounds, while the typical tire weighed 40 to 50 pounds. Ms. Delic told Dr. Wenzel that she began to develop left knee pain before 2015, but failed to recount a specific incident that caused her pain. She recalled that she had pain in her left knee

and that it popped on a frequent basis. She then told Dr. Wenzel about the July 1, 2018, incident wherein her left knee snapped while she was working with an 800-pound tire. Ms. Delic could not explain to Dr. Wenzel why she made no complaint or mention of her left knee issue until March of 2019. She also told him that she did not report her injury to her employer because she "felt that it would do no good." Based upon his examination, Dr. Wenzel opined that the claimant's left knee issues were not related to her work with Titan Tire.

Ms. Delic applied for and was granted Social Security Disability benefits. It should be noted by the parties that findings of the Social Security Administration as they relate to disability benefits are not binding on the undersigned. They also are not persuasive in this case considering the medical evidence in the record.

Despite my concerns about Ms. Delic's credibility, the evidence shows that she injured her knee at some point in time. She either had a cumulative injury to her left knee, which perhaps was aggravated on July 1, 2018, when she felt the popping, or she had a traumatic injury on July 1, 2018. I am concerned by her not mentioning this injury until several months later; however, based upon the evidence, she did suffer an injury to her left lower extremity.

The question then becomes whether the claimant suffered any impairment from this first qualifying injury.

Dr. Jacobson, a treating physician, who is an orthopedic surgeon, opined that the claimant required no work restrictions. He further opined that she required no further treatment for her left knee as of March 9, 2020. He concluded that the claimant reached MMI on January 10, 2020.

Dr. Bansal opined that Ms. Delic's job duties placed "considerable stress" on her left knee, especially with repetitive kneeling. He opined that this aggravated her meniscus and chondromalacia, which necessitated a surgical repair. He then opined that the claimant had a 2 percent permanent impairment to her left lower extremity based upon Table 17-33 and the claimant's treatment. Dr. Bansal agreed with Dr. Jacobson's date of MMI of January 10, 2020. He also opined that the claimant should have restrictions based upon an FCE.

Dr. Wenzel, who is board certified in occupational and environmental medicine, opined that the claimant had normal range of motion in her left knee. He also opined that the claimant had a non-work-related medial meniscal tear and chondromalacia patella. Dr. Wenzel noted in his report that Ms. Delic could not explain why she made no mention or complaint of her alleged July 1, 2018, work injury. He also noted that the claimant did not report the injury to her employer. Dr. Wenzel concluded that the injury was not work related, and therefore did not provide an impairment rating.

I previously determined that the claimant suffered an injury to her left knee. While Dr. Bansal's opinions are based upon flawed information for causation, his opinions as to permanent impairment are based upon an impairment rating provided by Table 17-33 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. The Guides, provide for a 2 percent impairment to the lower extremity in

patients who have undergone a partial meniscectomy. Dr. Bansal assessed the claimant with this impairment rating. Based upon the language of the statute and the applicable law, this does not need to be a traumatic injury or a work-related injury. Dr. Bansal is also the only provider to opine as to the claimant's permanent impairment stemming from her left knee injury. Therefore, I find that the claimant had a first qualifying injury that caused permanent disability to her left lower extremity.

The claimant alleges that she suffered a second injury at Titan Tire on March 13, 2019, when she developed pain in her right anterior shoulder, which radiated to her posterior right shoulder. She first described this pain to Dr. Aviles on March 25, 2019. Dr. Aviles treated her for a time and ordered an MRI. The MRI showed a possible tear of the claimant's biceps, which Dr. Aviles noted along with a diagnosis of an incomplete tear of the right rotator cuff. Dr. Aviles recommended that the claimant pursue a right shoulder arthroscopic rotator cuff repair, a biceps tenotomy, and a possible subacromial decompression. This surgery was eventually performed.

Ms. Delic continued by performing physical therapy, and was provided with certain restrictions. By September 25, 2019, Dr. Aviles found the claimant to have pain at 0 out of 10, and "excellent motion" in her shoulder. At that time, Dr. Aviles declared the claimant to have achieved MMI and allowed her to return to work with no restrictions or treatment. She saw her personal physician in January of 2020 and complained of increasing right shoulder pain. However, she never returned to Dr. Aviles' office for additional follow-up.

As noted above, Dr. Bansal examined the claimant for an IME in June of 2021. The IME also involved an examination and evaluation of the claimant's right shoulder and arm. Ms. Delic told Dr. Bansal that she had right shoulder pain for "a few weeks" prior to reporting her issues and seeking care. Ms. Delic told Dr. Bansal that she had right shoulder pain that radiated into her neck, shoulder blade and right arm. She also claimed that the last two or three fingers in her right hand would periodically go numb. She complained of pain and stiffness when reaching overhead. Dr. Bansal performed range of motion testing for the claimant. He opined that the jobs that Ms. Delic worked at Titan stressed her rotator cuff and biceps tendon, which caused them to tear. Dr. Bansal agreed with Dr. Aviles that the claimant achieved MMI as of September 25, 2019. He then proceeded to adopt certain restrictions based upon an FCE.

Dr. Wenzel also examined the claimant for an IME. Ms. Delic indicated that she had right neck pain which exceeded her right shoulder pain. Dr. Wenzel found the claimant to have tenderness over the right acromioclavicular joint. Like Dr. Bansal, Dr. Wenzel performed range of motion testing of the claimant's right shoulder. Dr. Wenzel did not engage in a causation analysis, as the right shoulder injury was an "accepted injury." He did elaborate on the surgery performed by Dr. Aviles by noting that Dr. Aviles performed a supraspinatus repair to the arm side of the shoulder joint. He also noted that Dr. Aviles performed a subacromial bursectomy. Dr. Wenzel provided restrictions including lifting only to 30 pounds on an occasional basis, and only working occasionally at or above shoulder height.

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

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

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

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

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the facts may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent. The statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

It certainly appears, based upon the information in the record, that the claimant sustained an injury to her right shoulder and right upper extremity on March 13, 2019. It does not appear that the claimant is arguing that this is a cumulative trauma type injury.

The question then becomes whether the claimant sustained a qualifying injury for Fund benefits. The claimant argues that the injury to her biceps implicates impairment to her right arm.

The Iowa Supreme Court in Chaves v. M.S. Technology, LLC, concluded that an injury to the rotator cuff, such as one suffered by Ms. Delic, is proximate to the glenohumeral joint, and therefore a shoulder injury. 972 N.W.2d 662, 670 (Iowa 2022). In this case, the claimant also suffered a biceps tendon tear. It is unclear from the medical records where on the tendon this tear was located. I have previously held that a tear of the long head of the biceps tendon is to be evaluated as an impairment of the shoulder pursuant to Iowa Code section 85.34(2)(n). See e.g. Ruff v. Senior Housing Health Care, Inc., File No. 1655383.01 (Arb. October 19, 2022). There is not adequate information in the records or IME to determine where the biceps tendon tear occurred (i.e. proximal to the glenohumeral joint or in the upper extremity). Dr. Bansal noted that the claimant had a right shoulder rotator cuff tear, along with a right biceps tendon tear. Dr. Bansal opined that the claimant sustained a permanent impairment to her right upper extremity due to a loss of elbow flexion. He also opined that the claimant's work caused her right biceps to carry a heavy mechanical load. Dr. Bansal opined that the claimant suffered a 4 percent permanent impairment based upon elbow flexion loss of strength secondary to the biceps tendon tear. Dr. Bansal also provided an impairment rating based upon the claimant's right shoulder injuries. Based upon the foregoing, I determine that the claimant has an injury to her shoulder as well as an injury to her right upper extremity.

In this case, the claimant has sustained permanent disability to her right arm and her right shoulder, which was caused by a single incident. Iowa Code section 85.34(2)(t) provides that:

> The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such . . .

The legislature did not include the "shoulder" along with other scheduled members to be compensated pursuant to Iowa Code section 85.34(2)(t) for loss resulting from a single accident. Therefore, Iowa Code section 85.34(2)(t) is not applicable to this case.

More applicable would be Iowa Code section 85.34(2)(v), which is referred to as the "catch-all" provision of Iowa Code section 85.34(2). The section states in pertinent part:

> In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "u" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred.

Iowa Code section 85.34(2)(v).

This case is similar to that in Anderson v. Bridgestone Americas, Inc., et al., File No. 5067475 (Arb. Sept. 2, 2021)(affirmed by Commissioner January 25, 2022)(affirmed by District Court August 3, 2022). In that case, the claimant sustained injuries to his right shoulder and his right upper extremity in the same accident or incident. Based upon the language of the statute, the deputy commissioner in that case, rightfully found that the injuries combined to be evaluated as an unscheduled injury. This case is distinguishable from Strable v. Second Injury Fund, as Strable concerned injuries that were a sequela of the scheduled member injury. File No. 1666216.03 (App. Nov. 29, 2022). This is an injury to two scheduled members as the result of the same incident, and is evaluated pursuant to Iowa Code section 85.34(2)(v).

Considering the foregoing, the claimant sustained permanent impairment to her right shoulder and right elbow. These combine to become an unscheduled injury. In order to obtain Fund benefits, the second injury must be an injury to a scheduled member. Therefore, the claimant is not entitled to benefits from the Fund as the combined injuries which occurred on March 13, 2019, are evaluated as an unscheduled injury.

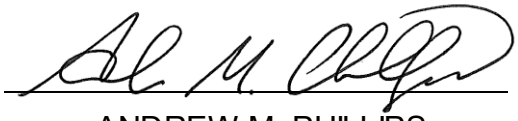
ORDER

THEREFORE, IT IS ORDERED:

That the claimant shall take nothing further.

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

Signed and filed this ___22nd___ day of February, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

Meredith Cooney (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.