

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DARWIN FRAUENHOLTZ,

Claimant,

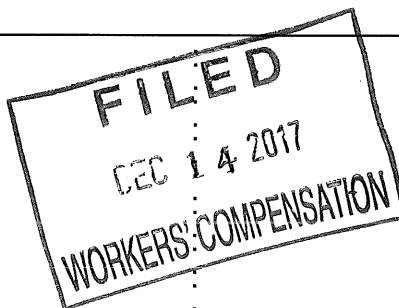
vs.

UNIVERSITY OF IOWA,

Employer,

STATE OF IOWA,

Insurance Carrier,  
Defendants.



File No. 5054112

ARBITRATION  
DECISION

Head Note No.: 1402.30

STATEMENT OF THE CASE

Claimant, Darwin Frauenholtz, filed a petition in arbitration seeking workers' compensation benefits from University of Iowa and State of Iowa, both as defendants. This matter was heard on July 18, 2017 with a final submission date of September 19, 2017.

The record in this case consists of Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 18 and 20, Defendants' Exhibits A through H, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant's injury arose out of and in the course of employment.
2. Whether the injury resulted in a temporary disability.
3. Whether the injury resulted in a permanent disability; and if so
4. The extent of claimant's entitlement to permanent partial disability benefits.
5. Credit.

6. Costs.

FINDINGS OF FACT

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Claimant was 60 years old at the time of hearing. Claimant graduated from high school. Claimant has an Associate's Degree in Agriculture from a community college.

Claimant has worked on farms and at a swine business, raising and transporting pigs. He worked in construction and drove grain trucks. From 1986 through 1997 and from 1998 through 2000 claimant worked for Slager Appliance delivering and installing appliances, and removing old appliances. Claimant also worked for Coca-Cola Bottling Distributors as a delivery person. Claimant stocked and maintained vending machines. He also worked for a carpet and upholstery cleaning company. (Exhibit 6, pages 3-10; Ex. 8, Deposition pp. 70-82)

Claimant began working at University in July of 2001. Claimant initially began working as a housekeeper at the hospital. Claimant transferred to a custodian position after ten months. (Ex. 8; Depo. pp. 82-84)

Claimant's job as a custodian has mainly been in the biology buildings at the University of Iowa. Claimant testified he works in a crew of four other custodians. At the time claimant's right shoulder condition began, claimant worked a skywalk area that connected two biology buildings, the science library building, the basement and second floor of the biology building, and the second floor of the old biology building. (Ex. 8; Depo. pp. 21-22, 47)

Claimant's duties as a custodian included cleaning bathrooms, cleaning in a classroom in the biology building, cleaning recycling tubs and trash containers, mopping, cleaning doors and windows, and cleaning the "fly room" area. (Ex. 8; Depo. pp. 26-39)

Claimant testified cleaning the "fly room" involved emptying bags of fly waste. Claimant said fly waste was waste from raising and feeding flies for biology experiments. Claimant testified fly waste consisted of cotton, food and dead flies. Claimant testified the bags weighed around 40 pounds per bag. (Ex. 8; Depo. pp. 29-33)

Claimant testified a document titled "Essential and Marginal Job Functions Analysis" was an accurate description of most of his job duties. (Ex. 7, pp. 6-9; Ex. 8, Depo. p. 19) The job description for the Custodian I position is found at Exhibit 14, pages 1 through 4.

In his petition claimant alleges a date of injury of August 7, 2013. Claimant testified in deposition he believed his shoulder symptoms began in early 2013. (Ex. 8, Depo. p. 50)

On June 4, 2012 claimant was evaluated by Maria Conley, D.C. Claimant indicated his neck and shoulder had been aching the last week and attributed the pain to mopping at work. (Joint Ex. 1, p. 2)

On August 6, 2012 claimant returned to Dr. Conley complaining of continued soreness in the neck and shoulders. (Jt. Ex. 1, p. 2) Claimant returned to Dr. Conley on September 10, 2012 complaining of sore and aching right shoulder from work at school. (Jt. Ex. 1, p. 2)

Claimant continued to treat with Dr. Conley from October 2012 through March of 2013 with continued complaints of aching and soreness in both arms. (Jt. Ex. 1, pp. 3-5)

On June 24, 2013 claimant was evaluated by Dr. Conley due to baling hay and mowing. (Jt. Ex. 1, p. 5)

On July 17, 2013 claimant was seen by Pravin Gupta, M.D. at Towncrest Internal Medicine. Claimant reported shoulder pain for the past month. Claimant was prescribed prednisone and told to avoid repetitive activities. (Jt. Ex. 2, p. 1)

On August 7, 2013 claimant was seen by Joe Moonjely, M.D. with complaints of right shoulder pain. Dr. Moonjely is claimant's family doctor. Claimant indicated overusing the shoulder at work. Claimant was given an injection in the right shoulder and given an excuse off of work for ten days. (Ex. 2, pp. 2-3)

Claimant testified, in deposition, he did not believe his shoulder symptoms were work related until the August 7, 2013 visit with Dr. Moonjely. (Ex. 8, Depo. p. 60; Transcript p. 83)

Claimant was off work for his shoulder beginning August 7, 2013. (Ex. 2, pp. 2-3)

On August 14, 2013 claimant was evaluated by Brenda Buikema, M.D. at the University of Iowa Health Works. Claimant indicated right shoulder pain began in July of 2013. Claimant also noted he had been seeing a chiropractor and undergoing physical therapy in May of 2013 for his shoulder. Dr. Buikema put claimant on light duty and recommended claimant have physical therapy. (Jt. Ex. 4, pp. 1-5)

The record indicates the University could not accommodate claimant's light duty restrictions. Claimant began receiving temporary total disability benefits during this period of time. (Tr. pp. 32-33, 87-88)

In a September 10, 2017 letter Dr. Conley indicated claimant first mentioned a shoulder condition in July of 2012. Claimant did not attribute his pain to any specific activity but said he had been doing a lot of mopping at work. (Ex. 16)

On September 12, 2013 claimant underwent an MRI of the right shoulder. It showed a full-thickness rotator cuff tear and AC joint arthritis. (Jt. Ex. 6, pp. 1-2) Claimant was referred to an orthopedic specialist. (Jt. Ex. 4, p. 10)

On October 24, 2013 claimant was evaluated by Matthew Bollier, M.D. at the University of Iowa Hospitals and Clinics (UIHC). Dr. Bollier is an orthopedic surgeon. Claimant was assessed as having a right supraspinatus full-thickness small tear and AC joint arthritis. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 7, pp. 1-7)

On October 29, 2013 Dr. Bollier indicated claimant attributed his work activities as a custodian to his right shoulder complaints. Dr. Bollier opined he could not attribute claimant's need for surgery to his work as a custodian. He opined claimant's rotator cuff tear was more likely related to the normal degenerative processes and aging. (Ex. 8, p. 1)

On October 30, 2013 claimant underwent a right shoulder surgery consisting of a subpectoral bicep tenodesis, a distal clavicle excision and subacromial decompression. Surgery was performed by Dr. Bollier. (Jt. Ex. 7, pp. 8-9)

In an October 31, 2013 letter defendants notified claimant his weekly benefits would terminate as of November 9, 2013, based upon the October 29, 2013 letter from Dr. Bollier. (Ex. 15, p. 1)

Claimant returned to work on March 7, 2014. He was permitted to work half a day for two weeks with no lifting over more than 25 pounds. (Jt. Ex. 7, p. 16) Claimant testified he probably would return to full-time work sometime on April 4, 2017.

On September 8, 2014 claimant was evaluated by Dr. Bollier. Claimant's condition was improving. Claimant requested his work restrictions be lifted and he be allowed to return to work full duty. Claimant was allowed to return to work at full duty. (Jt. Ex. 7, pp. 22-24)

In an April 25, 2016 letter Dr. Bollier indicated he could not attribute claimant's shoulder complaints or need for surgery to his work activities. (Ex. B, p. 1)

In a May 10, 2017 report, Richard Kreiter, M.D. gave his opinions of claimant's condition following an independent medical evaluation (IME). Dr. Kreiter opined the repetitive physical work claimant performed progressed to degenerative arthritis and a full-thickness tear. He opined claimant had a 17 percent impairment to the right upper extremity, converting to a 10 percent permanent impairment to the body as a whole. He limited claimant to occasionally lifting up to 5 to 10 pounds. (Ex. 2)

In a June 2, 2017 report, Dr. Bollier opined he reviewed Dr. Kreiter's May of 2017 IME report. Dr. Bollier noted Dr. Kreiter did not explain why he believed claimant's condition was related to work. Dr. Bollier noted the AMA Guides to the Evaluation of Disease and Injury Causation, (Second Edition) indicate that in the absence of a

traumatic event, the only occupational risk factor for a torn rotator cuff would be strong evidence of an arm being held in an awkward position. Claimant had no traumatic event. He did not describe any part of his job that would be considered an awkward position as defined by the Guides. The Guides do note that age and other factors are non-occupational risk factors. (Ex. D)

Dr. Bollier also noted:

The Guides go into detail in reviewing peer-reviewed articles on age-related rotator cuff tear incidents on pages 323-324, routinely finding that approximately 40% and as many as 54% of people ages 50-60 had rotator cuff tears, regardless of vocational or avocational activity level or even reporting of symptoms. The Guides later report, on page 766, that 'Rotator cuff lesions are seen with aging and are often asymptomatic. Typically, activity is beneficial, not detrimental. Although workplace risk factors may contribute to shoulder symptoms, as outlined in this book, it appears most shoulder conditions develop at a similar rate.' This has been my experience in treating thousands of patients with shoulder conditions and the need for shoulder surgery: in the absence of specific trauma, onset of symptoms is largely the result of normal, age-related degeneration, and is likely to develop regardless of vocational or avocational activities. If anything, repetitive work can be beneficial, mirroring the rotator cuff strengthening exercises we prescribe for patients on a routine basis. The other conditions in Mr. Frauenholtz's shoulder, including degenerative AC joint osteoarthritis and biceps tendinopathy, likely are the result of normal, age-related changes as well, for similar reasons.

(Ex. D, p. 2)

In a July 27, 2017 letter Dr. Conley opined claimant's degenerative arthritis and torn rotator cuff condition were caused by the work claimant performed between May 1, 2012 and June 4, 2012. She opined claimant did not have shoulder problems before 2012 and thus his injury to his shoulder was due to his work. (Ex. 17)

In a July 5, 2017 report Dr. Kreiter noted:

I am perhaps 20 years older than Darwin. When I was a senior in high school, I had my right shoulder operated on at the University of Iowa for recurrent dislocation. This was done at the old children's hospital, and I vividly remember Calvin Jones, an All-American football player at Iowa, visiting me to see if I wanted to play at Iowa. I declined, and went to Grinnell College. Although I have some limited right shoulder motion, I have no pain. We have a 250 acre hardwood timber, where at least 2 to 3 days a week I spend time with chain saws and loppers, girdling trees and

doing crop tree release. Although I most likely have some wear and tear, I am able to do strenuous work without pain. My AC joint is not painful, and in my years of orthopedic experience, most older, physically active males do not have AC joint pathology.

(Ex. 4)

Dr. Kreiter goes on to note he still opined claimant's shoulder condition was work related from repetitive trauma over time. (Ex. 4)

Claimant testified that while Dr. Kreiter has given him restrictions, he has not given these restrictions to a supervisor. Claimant says he watches how he uses his right shoulder at work. Claimant testified he has changed some activities by using his left shoulder more for work. Claimant said he limits his use of his right upper extremity to protect his right shoulder. Claimant says he still is employed as a custodian at the University of Iowa.

Claimant testified if he carries too much with his right arm, he will get some pain in his right shoulder.

Claimant testified he does not think he could return to work to any of his prior jobs due to his right shoulder restrictions. He said he bought a self-propelled lawnmower and snow thrower to protect his right shoulder.

#### CONCLUSIONS OF LAW

The first issue to be determined is if claimant sustained an injury that arose out of and in the course of employment.

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

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

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

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

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 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 factors 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 so 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).

Claimant contends he sustained a shoulder injury as a result of performing repetitive duties at his job as a custodian at the University of Iowa.

Dr. Bollier treated claimant for almost a year. (Ex. 7) He performed shoulder surgery on claimant. Dr. Bollier initially opined claimant's rotator cuff tear and his need for surgery was not work related. (Ex. A; Ex. B)

In a later, more detailed opinion, Dr. Bollier indicated he had reviewed Dr. Kreiter's report and still believed claimant's shoulder injury, and the need for surgery, was not caused by work. Dr. Bollier's opinion, is based, in large part on the Guides to the Evaluation of Disease and Injury Causation, Second Edition. Claimant denied a specific traumatic event that caused his shoulder injury. The Guides indicate that absent a traumatic event, a rotator cuff tear can only be considered occupational if there is strong evidence of an awkward position of the shoulder. Claimant did not indicate his arm or shoulder was in an awkward position as that term is defined by the Guides. (Ex. D)

Dr. Bollier added that based upon his experience of treatment of thousands of patients with shoulder conditions, and the need for surgery, in the absence of a specific trauma, or onset of symptoms, it is usually related to age-related degeneration, regardless of vocation. (Ex. D, p. 2)

Claimant also treated with Dr. Conley, a chiropractor, for an extended period of time. Dr. Conley believed claimant's shoulder condition was related to his work. However, Dr. Conley relates claimant's shoulder condition not to an August of 2013 date of injury, but opined his date of injury probably occurred sometime in May or June of 2012. (Ex. 17)

Dr. Conley did not address Dr. Bollier's opinion. She specifically offered no rationale why claimant's rotator cuff tear would be considered an occupational injury given Dr. Bollier's application of the AMA Guides to the Evaluation of Disease and Injury.

Because Dr. Conley finds claimant's work injury occurred more than a year before the alleged date of injury, and largely because she offers no argument regarding Dr. Bollier's reliance on the AMA Guides to the Evaluation of Disease and Injury, it is found her opinion regarding causation is not convincing.

Dr. Kreiter also opined claimant's injury was caused by the use of his upper extremities in working as a custodian. (Ex. 2; Ex. 4) Claimant saw Dr. Kreiter on one occasion for an IME. Dr. Kreiter also does not offer much in the way of rebuttal regarding Dr. Bollier's reliance on the Guides. Instead of offering any argument based on a treatise, research, reviews or articles, as to why the reliance on the Guides is wrong in finding claimant's injury is not related to his occupation, Dr. Kreiter only offers an anecdote regarding his old shoulder injury. Dr. Kreiter indicates he still cuts wood at the age of 70 and has no AC joint pain. (Ex. 4) Given Dr. Kreiter's lack of any reliable source for disputing Dr. Bollier's opinion, his opinion regarding causation is also found not convincing.

Dr. Bollier opined claimant's injury was not work related and was probably caused by normal degenerative processes in aging. His opinion is based on his experience as a surgeon and treating thousands of patients for shoulder conditions. It is also based on the AMA Guides to the Evaluation of Disease and Injury. This treatise



finds that absent a traumatic injury, or an awkward position, as defined by the Guides, a rotator cuff tear is not work related. The opinions of Dr. Kreiter and Dr. Conley are found not convincing. Given this record, claimant has failed to carry his burden of proof his shoulder condition and the subsequent need for surgery arose out of and in the course of employment.

As claimant has failed to carry his burden of proof his injury arose out of and in the course of employment, all other issues are moot.

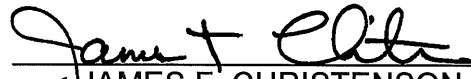
ORDER

Therefore it is ordered:

That claimant take nothing from these proceedings.

That each party shall pay their expenses.

Signed and filed this 14<sup>th</sup> day of December, 2017.

  
JAMES F. CHRISTENSON  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFC/sam

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