

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL TUGGLE, SR.,

Claimant,

vs.

WELLS AG SUPPLY, LLC,

Employer,

and

GRINNELL MUTUAL REINSURANCE  
COMPANY,Insurance Carrier,  
Defendants.

File No. 20001832.01

ARBITRATION DECISION

Head Note No.: 1803

**STATEMENT OF THE CASE**

Claimant, Michael Tuggle, Sr., has filed a petition for arbitration seeking workers' compensation benefits against Wells AG Supply, LLC, employer, and Grinnell Mutual Reinsurance Co., insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of Coronavirus/COVID-19 Impact on Hearings, the hearing was held via Zoom on February 8, 2022, and considered fully submitted upon the simultaneous filing of briefs on March 25, 2022, the agreed upon date after an email request for an extension.

The record consists of Joint Exhibits 1-16, Claimant's Exhibits 1-8, Defendants' Exhibits A-P, and the testimony of the claimant.

**ISSUES**

1. The extent of claimant's disability.

**STIPULATIONS**

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.

The parties stipulate claimant sustained an injury on January 31, 2020, to his cervical spine arising out of and in the course of his employment. They further agree that the injury was the cause of a temporary disability entitled to which is no longer in dispute.

The parties agree the disability is industrial in nature and that the commencement date for permanent partial disability benefits is February 21, 2021.

At the time of the injury claimant's gross earnings were \$1,141.18 per week and that claimant was married and entitled to three exemptions. Based on the foregoing, the parties believe the weekly benefit rate to be \$742.06.

Defendants waive all affirmative defenses. There are no medical benefits in dispute.

Prior to the hearing, claimant was paid 49 weeks of compensation at the rate of \$742.06 per week through January 22, 2022, and continuing pursuant to a 15 percent permanent partial disability rating.

### **FINDINGS OF FACT**

Claimant was a 56-year-old person at the time of the hearing. At all relevant times, claimant was married with one minor dependent. He graduated from high school in 1984, enlisted in the US Army where he was trained in helicopter repair. He went on to obtain a CDL in 1995. His work history includes driving small trucks for a fabric manufacturer prior to the enlistment in the Army. Following discharge from the military, he did aircraft repair, machinery maintenance, stocker at a grocery store and telemarketing. Around November 1995, claimant began driving truck which he continues to do presently.

Claimant was hired by defendant employer as a truck driver on September 19, 2018, and is currently still employed with defendant employer in the same capacity as he held prior to the injury on January 31, 2020. (DE H:18)

Claimant's past medical history is significant for right shoulder injury in 1987 that resulted in a rotator cuff injury and left shoulder arthroscopy with limited debridement in June 2013. (Testimony; JE 1:1) He also suffered a concussion, right elbow abrasion and low back contusion upon falling off his truck on July 17, 2015. (JE 1:2) A CT of the cervical spine showed kyphotic alignment likely due to a muscle spasm and moderate central stenosis at C5-C6 due to disc and osteophyte complex with suspected flattening of the cord. (JE 2:6)

On October 1, 2015, claimant was seen for complaints of a headache. (JE 6:18) The records note that the MRI of the brain completed on July 29, 2015, showed no underlying structural abnormalities and the EMG study of the upper right extremity from September 11, 2015, was normal. (JE 6:18) The diagnosis was post concussive symptoms. (JE 6:21)

On December 29, 2015, he was seen in follow up for the post concussive syndrome. (JE 6:22) Claimant continued to have headaches that he rated 2 on a 10

scale along with gait and balance issues. (JE 6:22) ARNP Susan Vigdal offered physical therapy for the gait and balance issues and a low dose prescription of Prozac for irritability and anger issues. (JE 6:24) Claimant declined both. On March 4, 2016, claimant reported that his gait and balance issues appeared to have resolved. (JE 6:27) He continued to decline the Prozac but agreed to stop using Tylenol as it could have been contributing to claimant's headaches. (JE 6:27) It was noted in the history section that claimant wanted more work hours.

On February 19, 2016, claimant was seen by Kevin J. Liudahl, M.D., for a complete rotator cuff tear. (JE 7:28) Dr. Liudahl recommended a rotator cuff tear repair, subacromial decompression, and AC resection. (JE 7:31)

On December 7, 2016, claimant presented to Tri-State Specialists for a variety of somatic complaints. (JE 7:33) He had been back to work doing normal duty with some limitations. Id. During the examination, he showed "fairly good range of motion, fair strength." (JE 7:35) Dr. Liudahl removed all restrictions and assigned a 3 percent impairment rating for residual weakness in the right upper extremity. Id.

In a lengthy review with Douglas Martin, M.D., on June 1, 2017, claimant shared concerns about residual low back pain, left and right shoulder pain, as well as ongoing issues he attributed to his brain injury. (JE 8:36) He stated specifically that he found it difficult to steer with his commercial truck and that he would get into situations where his left shoulder hurt, and that pain would radiate down into the elbow. (JE 8:37) He was using a TENS unit and related that he was told he had degenerative disk disease by one of his VA doctors. (JE 8:38) He also reported daily headaches. Id.

During the examination, he was able to get in and out of the chair easily, had symmetric reflexes of his upper and lower extremities, normal strength as well. (JE 8:39) Examination of his left shoulder revealed complaints of anterior tenderness. (JE 8:39) He had a technically positive empty pop can maneuver on the left and equivocal impingement tests. (JE 8:39) On the right, he had an audible pop with active and passive range of motion. (JE 8:39) Examination of the lower extremities showed a patch of decreased light touch and two-point discrimination testing in the right lateral thigh, consistent with a lateral femoral cutaneous neuropathic process. (JE 8:40) Tests were negative for radiculopathy. The left tibial tubercle was 47.0 cm compared to 50 cm on the right. (JE 8:40)

Dr. Martin opined that claimant's impairment for the low back would be 5 percent of the whole person with regard to the 2015/2016 injury. (JE 8:41) He also believed claimant sustained no permanent impairment from his alleged traumatic brain injury as claimant had no problems interacting, had normal conversation, good insight, no name identification problems. (JE 8:42) At worst, claimant had a little bit of a depressive disorder. (JE 8:42)

For the left shoulder, Dr. Martin assigned, at most, 5 percent of the left upper extremity. (JE 8:42) He concluded with the following, "with regards to his activity levels, he certainly would be certifiable . . . as a commercial driver, and would satisfy the Federal Motor Carrier Safety Administration criteria to hold a commercial driver medical certificate." (JE 8:43) In regard to the need for permanent restrictions, Dr. Martin

referenced the restrictions placed on claimant's low back from his Kentucky injury claim in 1990, and that claimant would need no new restrictions for his low back or shoulder injuries of 2015/2016. (JE 8:43)

At the time of the stipulated work injury, claimant was working without restrictions nor was he receiving medical care for any of the aforementioned injuries.

On January 31, 2020, claimant was driving his semi-truck when his trailer was struck by an oncoming pick-up truck. Claimant was driving approximately 45 miles per hour at the time he was hit. Claimant felt pain in his shoulder radiating down into the left arm. He was seen at the Unity Point Health Clinic on the same date and given medication with orders to follow up in seven days or earlier if the pain worsened. (JE 9:50)

He returned on February 13, 2020, with reports of neck and left upper extremity pain. (JE 9:51) For several months, claimant was treated for a shoulder injury. (See infra JE 10:56-61) Claimant was discharged from therapy on March 6, 2020, with mild tone and tenderness in the left upper extremity. (JE 10:6) The therapist noted claimant had put forth a good effort during therapy. Id. Charles Mooney, M.D., released claimant and placed him at MMI for both the neck and shoulder along with a full duty release. (JE 15:93-94)

However, claimant's condition did not improve and upon returning to Dr. Mooney for follow-up on June 8, 2020, it was determined that additional testing should be conducted. (JE 15:97) Claimant underwent an MRI of the cervical spine on June 22, 2020, which revealed slight reversal of lordosis with resultant borderline spinal canal stenosis throughout much of the cervical spine and degenerative discovertebral changes, greatest at C5-C6 and C6-C7 where there were prominent left lateral recess spondylotic components resulting in narrowing of the lateral recesses at the aforementioned levels as well as moderate to severe neural foraminal encroachment at C5-C6. (JE 11:63)

This condition was initially treated with steroid injections per the referral of Dr. Mooney. (JE 15:99; 12:67; 12:70) However, as claimant's condition persisted, he was referred to see Lynn Nelson, M.D., for a surgical opinion. (JE 15:101) At the recommendation of Dr. Nelson, claimant underwent two level spinal fusion surgery on December 16, 2020. (JE 13:71) In the initial encounter with Dr. Nelson, the surgeon noted "to his credit, he has remained active including continuing to work full time. He reports, however, he has significant pain which he definitely believes warrants intervention." (JE 14:75)

In the follow up visit of January 5, 2021, claimant noted left scapular and posterior neck pain. (JE 14:77) Dr. Nelson characterized claimant's postoperative progress as "very adequate" and recommended a cervical bone growth stimulator to maximize the likelihood of obtaining a solid fusion. (JE 14:77)

Claimant was returned to work on February 18, 2021, with a 25-pound lifting limit, and no unloading/loading of the truck. (JE 14:78) Claimant's symptoms at the time included hand numbness with neck rotation opposite of the left upper extremity. (JE

14:78) His work restrictions were further eased on April 8, 2021, to lifting of 40 pounds. (JE 14:83)

During the May 13, 2021, follow up, Dr. Nelson noted claimant's slow recovery and recommended continued moderate work restrictions with a possibility of a work reconditioning program. (JE 14:85)

On June 24, 2021, Dr. Nelson opined claimant was at MMI and assigned a 15 percent impairment rating. (JE 14:86-89; DE H:20)

Utilizing the AMA Guidelines to the Evaluation of Permanent Partial Impairment, Fifth Edition, with modifications as recommended by author Dr. Harrelson, the permanent partial impairment rating was set at 15 percent. (JE 14:89)

Dr. Nelson noted that claimant was not pain free. (JE 14:86) Claimant suffered intermittent neck stiffness and some right radial fingertip paresthesias. (JE 14:86) Claimant was continuing to work under the restrictions of no climbing into vehicles without ladders. (JE 14:88)

On July 14, 2021, Dr. Mooney opined claimant reached MMI on January 31, 2020, and suffered no permanent impairment as to the left upper extremity injury. (JE 15:106)

Dr. Bansal examined claimant on September 13, 2021 and assigned a 25 percent whole person impairment rating arising out of the claimant's neck injury based on claimant meeting the criteria from DRE Category IV in the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 3:32) Dr. Bansal also recommended restrictions of no lifting more than 35 pounds, avoiding ladders including those used to climb into a truck, and no work activities that require repeated neck motion. (CE 3:32) During the examination, claimant exhibited tenderness to palpation over the cervical paraspinal musculature and reduced range of motion. (CE 3:30) He had a loss of sensory discrimination on the right using a two-point discriminator but it was normal on the left. (CE 3:30) All other tests were normal. Dr. Bansal agreed with Dr. Nelson's assessment as to claimant's MMI date of June 24, 2021. (CE 3:31)

Table 15-5 contains the criteria for rating impairment due to cervical disorders. AMA Guides 5<sup>th</sup> Edition, P. 392, Table 15-5. The Guides also contain examples for the different categories. Dr. Nelson placed claimant in the III category.

**Example 15-14**

**15% to 18% Impairment Due to Radiculopathy**

**Subject:** 44-year-old man.

**History:** Sustained a blow to his posterior neck from a machine support that slipped. Unable to use his dominant left hand for ADL without considerable pain in neck, left upper back and ulnar left upper limb. No discomfort in the lower extremities. Refuses surgery.

**Current Symptoms:** Neck pain, radiating to the ulnar hand with numbness of the ring and little fingers.

**Physical Exam:** Decreased range of motion in the neck with severe radiating pain to the left arm in a C6 distribution.

**Clinical Studies:** MRI: left posterolateral disk herniation C7-8.

**Diagnosis:** Radiculopathy due to disk herniation C6.

**Impairment Rating:** 18% impairment of the whole person.

**Comment:** Residual symptoms and functional limitations to perform ADL.

Dr. Bansal placed claimant in the IV category.

**Example 15-15**

**25% to 28% Impairment Due to Alteration of Motion Segment Integrity**

**Subject:** 37-year-old woman.

**History:** Onset of pain in the neck and right arm along the radial aspect and into the thumb following a medium-speed rear-end auto collision. Individual failed conservative treatment, and an MRI showed a herniated disk at C6-7. Underwent a discectomy of the sixth cervical disk and fusion of C6 to C7. Healed uneventfully and returned to work 4 months after the injury.

**Current Symptoms:** Occasional neck pain with physical activity. Upper extremity pain resolved.

**Physical Exam:** Slight loss of cervical spine motion. Neurologic examination is normal.

**Clinical Studies:** Radiographs: healed C6-7 fusion.

**Diagnosis:** Herniated disk C6-7 with C7 radiculopathy resolved following anterior cervical discectomy and C6-7 fusion.

**Impairment Rating:** 25% impairment of the whole person.

**Comment:** This individual meets criteria for DRE cervical category IV because of alteration of motion segment integrity due to fusion.

Without further clarification as to what guidance of Dr. Harrelson, the chair of the Spine section of the AMA Guidelines, Fifth Edition, provided, a reading of the text supports that the example in 15-5 most closely aligns with claimant's condition. Like the example 15-15 in the Guides, claimant underwent fusion at two levels in his spine. He had restrictions of no climbing in and out of vehicles without a ladder as well as residual stiffness in the neck and right radial fingertip paresthesias. He had ongoing shoulder impairments during his September 2021 physical but needed no additional medical interventions. The comment states that the individual in the example meets criteria for DRE cervical category IV because of alteration of motion segment integrity due to fusion whereas the individual in example 15-14 had no surgery. Thus, it is found that Dr. Bansal's assessment of permanent impairment is most consistent with claimant's injury, course of treatment, and currently stated physical issues.

Claimant passed a DOT physical in August 2021 and underwent an annual examination in September 2021. The DOT physical noted no abnormalities and that claimant met all standards except for ongoing monitoring due to high blood pressure and sleep apnea. (JE 16:110-111) During the September 2, 2021, physical, claimant identified shoulder joint pain with right shoulder impingement and left shoulder pain as one of his active problems but denied neck pain. (JE 17:114) He further denied the need for additional interventions for his shoulder joint pain. (JE 17:117)

Claimant drives primarily tankers but defendant employer has been increasing claimant's van driving duties which causes additional complications and pain because of the extra effort necessary to complete the job tasks. Since the injury, claimant has obtained a hazmat endorsement and he attributes his higher pay due to that endorsement.

Claimant continues to have daily pain in his right hand as well as altered sensation for which he takes daily doses of Celebrex and Tylenol. Claimant did take Celebrex prior to the injury. Claimant testified, although it is not recorded in the medical records, that Dr. Nelson informed him that the altered sensation would not be eliminated without further surgery.

Blake Elbert, claimant's supervisor, testified that claimant still works his pre-injury position with no restrictions. (Testimony)

### **CONCLUSIONS OF LAW**

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

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer 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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs “in the course of” employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained.

The 2017 change to Iowa Code Ch. 85 includes a revision of how industrial disability is measured in cases where the injured worker has returned to work at the same or greater salary, wages, or earnings than he had been receiving at the time of the injury, the employee shall be compensated based only upon the employee’s functional capacity impairment resulting from the injury, and not in relation to the employee’s earning capacity. Iowa Code Section 85.34(2)(v)(2017).



It is undisputed that claimant has returned to doing the same work as he was pre-injury and that he is earning a greater wage than he had been receiving at the time of the injury, in part due to his obtaining a hazardous materials endorsement to his CDL.

Thus, the permanent partial disability of claimant must be measured by his functional impairment. Based on the above finding adopting the opinion of Dr. Bansal and the impairment rating Dr. Bansal provided, it is determined claimant has sustained a 25 percent functional impairment of his body as a whole.

### ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant 125 weeks of permanent partial disability benefits at the rate of seven hundred forty-two and 06/100 dollars (\$742.06) per week from February 21, 2021.

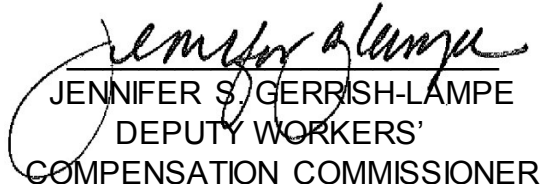
That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

That defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this \_\_\_\_\_ 16<sup>th</sup> day of May, 2022.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Willis Hamilton (via WCES)

Aaron Oliver (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.