

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MA SOLEDAD LUQUE-VALADEZ,

Claimant,

vs.

TYSON FRESH MEATS, INC.,

Employer,
Self-Insured,
Defendant.

File No. 20002777.01

ARBITRATION DECISION

Head Note Nos.: 1402.30, 1402.40
1803**STATEMENT OF THE CASE**

Claimant Ma Soledad Luque-Valadez filed a petition in arbitration seeking worker's compensation benefits against Tyson Fresh Meats, Inc., self-insured employer, for an accepted work injury date of November 18, 2019. The case came before the undersigned for an arbitration hearing on May 31, 2023. Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 7, and Defendant's Exhibits A through F.

Claimant testified on her own behalf through interpreter, Suzanne Wedeking. Jorge Gonzalez Lopez testified on behalf of the employer. The evidentiary record closed at the conclusion of the evidentiary hearing on May 31, 2023. The parties submitted post-hearing briefs on June 26, 2023, and the case was considered fully submitted on that date.

ISSUES¹

1. Whether claimant sustained a left shoulder sequela injury as a result of the admitted right shoulder injury on November 18, 2019;

¹ Payment of claimant's independent medical examination (IME) was listed as an issue on the hearing report. However, at hearing, defendant agreed that the IME would be reimbursed, so it is no longer an issue. (Hearing Transcript, p. 6)

2. The nature and extent of permanent disability;
3. The proper commencement date for permanent partial disability benefits; and
4. Taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and her demeanor at the time of hearing gave the undersigned no reason to doubt her veracity. Claimant is found credible.

At the time of hearing, claimant was a 52-year-old person. (Hearing Transcript, page 11) She is married and has three children. She is originally from Mexico and does not speak, read, or write in English. (Tr., pp. 11-12) Claimant attended school in Mexico through sixth grade, after which she had to stop due to a lack of money in the family. (Tr., pp. 12-13) Claimant is able to read and write in Spanish, but does not have any computer skills. (Tr., p. 13)

Before coming to the United States, claimant worked as a seamstress in Mexico from approximately 1990 until 2014. (Tr., p. 14) She came to the U.S. in 2015 because her husband was living here, and she moved directly to Lakeside, Iowa, where she still lives today. (Tr., pp. 15-16) She started working at the Tyson plant in Storm Lake, Iowa, on March 9, 2015. (Tr., p. 16) Prior to beginning work at Tyson, claimant had to go through a physical examination, which she passed with no limitations. (Tr., pp. 16-17) Claimant had never had any problems or medical treatment for either of her shoulders prior to going to work for Tyson. (Tr., p. 16)

Claimant's first job at Tyson was membrane skinner. (Tr., p. 17) After about one year, she moved to the knife job. She did that job for about two years, which involved slicing a layer off a piece of meat, and throwing it above to a conveyor. (Tr., pp. 17-18) After that job, claimant went back to the membrane skinner job, which is where she continued to work until her injury in November 2019. (Tr., p. 18) The membrane skinner job involves taking small pieces of meat, around five pounds, that arrive on a line at waist level, and using a hook to place the meat into a membrane skinner machine and clean it. (Tr., pp. 18-19) Claimant described that she would grab each piece of meat with her left hand, and then hook it with the hook in her right hand. In order to clean each piece, she would run it through the membrane skinner machine while it was on the hook in her right hand. (Tr., p. 20) Once the meat was clean, claimant would toss it off the hook onto a belt, using her right arm. (Tr., pp. 20-21) Claimant said she generally processed about four pieces of meat per minute, working eight to nine hours per day, six days per week. (Tr., p. 21)

Claimant injured her right shoulder while working on November 18, 2019. She testified that she put a piece of meat on the machine with her left hand, and started to rotate it with her right. (Tr., pp. 21-22) When she went to throw the cleaned piece onto the belt, the hook would not release the meat, and she felt something pull in her right shoulder. (Tr., p. 22) Claimant reported the injury to a supervisor, who took her to the nurses' station. (Tr., p. 23) The nurse prepared a written report in English, which claimant signed. She continued to treat at the nurses' station with ice, a topical cream, and pills for about one month. (Tr., p. 24) Eventually, she was sent to a doctor off-site, David Archer, M.D. (Tr., pp. 24-25)

Dr. Archer put claimant on light duty and sent her for physical therapy. (Tr., p. 25; Joint Exhibit 1, pp. 1-3) Records indicate her first therapy session was December 30, 2019. (Jt. Ex. 1, p. 1) At that time, she was very tender and reported any movement irritated her pain. She tested positive for impingement and rotator cuff involvement. She reported using her left arm as much as possible to perform tasks at that time. (Jt. Ex. 1, p. 3) Claimant testified that her light duty work involved watching a line where meat would go by, and did not require any lifting or overhead work. (Tr., p. 25)

Claimant continued with physical therapy, and was eventually referred to Seth Harrer, M.D. (Jt. Ex. 2, p. 49) It appears she had a right shoulder MRI on January 21, 2020. (Claimant's Exhibit 1, p. 3) She saw Dr. Harrer on February 12, 2020, at which time he diagnosed her with a right shoulder rotator cuff tear. (Jt. Ex. 3, p. 63) He discussed with claimant the options of either doing an injection with more physical therapy, or surgery. The decision was made to schedule surgery, and claimant had a pre-operative physical with Dr. Archer on February 24, 2020. (Jt. Ex. 4, p. 82)

Dr. Harrer performed surgery on February 28, 2020, consisting of right shoulder arthroscopy with rotator cuff repair, labral debridement, biceps tenotomy, subacromial decompression, and distal clavicle excision. (Jt. Ex. 4, p. 85) His operative findings included an approximately 1.5 to 2 centimeter rotator cuff tear, full thickness anterior supraspinatus to posterior; biceps partial tear of the long head with significant erythema surrounding; subacromial spurring; AC joint osteoarthritis; intact labrum; and no chondromalacia in the glenoid or the humeral head.

Claimant saw Dr. Harrer for a post-operative follow up on March 13, 2020. (Jt. Ex. 3, p. 65) At that time he wanted her to continue to wear a sling and abductor pillow, and begin physical therapy. At her next follow up on April 9, 2020, she was progressing well with physical therapy and her pain was mostly managed. (Jt. Ex. 3, p. 66) She continued with physical therapy. (Jt. Ex. 1, pp. 8-11) Her next visit with Dr. Harrer was May 7, 2020, at which time she continued to have some pain, and limited range of motion. (Jt. Ex. 3, p. 67) Overall she was doing well, and her physical therapy was continued, along with a prescription for an anti-inflammatory and low-dose muscle relaxer to try to calm down her pain.

Claimant continued with physical therapy (Jt. Ex. 1, pp. 12-14) At her next follow up with Dr. Harrer on June 4, 2020, she reported that her physical therapy office had closed, so she had not been there in two or three weeks. (Jt. Ex. 3, p. 68) She had been

trying to do her exercises at home but had not worked on strength much. She reported her shoulder felt more painful at night and she was still having pain during the day as well. Dr. Harrer directed her to start physical therapy at a different location, and start working on strengthening the shoulder in addition to range of motion. He also continued her anti-inflammatories to help calm down her pain.

At her next visit with Dr. Harrer on July 2, 2020, claimant reported that she did not feel she was progressing in physical therapy. (Jt. Ex. 3, p. 70) She continued to have significant deficits in her range of motion and significant pain. She reported pain all the way down her arm for about 24-hours after each physical therapy session. She did not feel the anti-inflammatories or muscle relaxers were helping. Dr. Harrer provided an injection on that date, and discussed a potential repeat MRI if the injection was not helpful. He continued claimant's therapy, and allowed her to return to light duty work with a 10-pound lifting restriction from waist to chest height.

Claimant returned to Dr. Harrer on July 16, 2020, and reported that the injection had not been helpful. (Jt. Ex. 3, p. 71) Due to her lack of progress with therapy and decreased range of motion, Dr. Harrer ordered a repeat MRI. The MRI took place on July 22, 2020, and claimant returned to Dr. Harrer on July 27, 2020. (Jt. Ex. 3, p. 72) At that time, she reported she had started back to light duty work and it was going well. She continued to have muscle aches in the trapezius area, and overall felt "tight." Dr. Harrer reviewed the MRI and noted it showed a stable rotator cuff repair without changes. He had claimant continue the anti-inflammatories and physical therapy, and anticipated she would be able to start work hardening in six weeks.

Claimant continued with physical therapy and light duty work. (Jt. Ex. 1, pp. 23-30) On October 8, 2020, she saw Dr. Harrer, and noted some soreness in the trapezial and periscapular musculature. (Jt. Ex. 3, p. 73) On physical examination, Dr. Harrer noted claimant had improved range of motion, and her strength was equal to the contralateral side. He felt claimant's symptoms were likely coming from weakness of the shoulder and utilization of accessory muscles to compensate for the shoulder weakness. He noted that the more she used her shoulder, the more strength she would gain, and encouraged her to continue her home exercises. He sent her for one additional therapy session to get an adequate home exercise program, and noted that it can take a year for symptoms to resolve. He placed her at maximum medical improvement (MMI) and discharged her from care. He did not assign any permanent restrictions. (Jt. Ex. 2, p. 54) On November 11, 2020, Dr. Harrer responded to a letter from Tyson regarding permanent impairment. (Jt. Ex. 2, p. 55) He marked "no" in response to the question of whether claimant sustained any permanent partial impairment from the injury.

Claimant testified that her right shoulder was still painful when she was released in October of 2020. (Tr., p. 31) She said that the surgery helped a little bit, mainly with movement, but she was not able to move it the way she could prior to the injury. (Tr., pp. 31-32) She testified that Dr. Harrer told her there was nothing more she could do for her pain at the time of her release. (Tr., p. 32) She returned to work in her previous job as a membrane skinner, but testified that she was not able to do the job at the same

pace as she had before the injury. (Tr., pp. 32-33) She said she was slower, and then she had to use her left arm more to help her right arm. (Tr., p. 33) She described that after her return to work in October 2020, she used her left arm to throw the pieces of meat back onto the line, because her right shoulder hurt. (Tr., pp. 33-34) Prior to the injury, she only used her right arm to throw the meat. (Tr., p. 34) As a result, she testified that she gradually began to develop pain in her left shoulder around the beginning of January 2021. This testimony is consistent with claimant's deposition testimony. In her deposition, claimant said that since she returned to work in October of 2020, she has been doing her job at a slower pace than she did prior to the injury. (Defendants' Exhibit, A, pages 2, 4-6, Deposition Transcript, pp. 6, 14-15, 19, 24) She also testified that after she returned to work, she was using her left arm more than she did prior to the injury, using it to grab and toss the meat, and as a result she started to experience left shoulder pain in early 2021. (Def. Ex. A, p. 9, Depo. Tr., p. 33)

Claimant reported the left shoulder pain, and was sent back to Dr. Harrer. (Tr., pp. 34-35) She saw Dr. Harrer on January 13, 2021, whose note indicates she was "pulling some product and subsequently had pain in the shoulder a pop in the bicipital area pain up in the shoulder." (Jt. Ex. 3, p. 74) Claimant testified that she had an interpreter from Tyson with her at the appointment, and she did not report a pop in her shoulder, but said that her left shoulder had been hurting because she had been using it repetitively. (Tr., pp. 35-36) In any event, Dr. Harrer sent claimant back to physical therapy, prescribed anti-inflammatories, and restricted claimant to light duty work. (Jt. Ex. 3, p. 74) His note indicates they also discussed an injection but decided to hold off at that time.

Claimant returned to physical therapy on January 18, 2021. (Jt. Ex. 1, pp. 31-38) There is a handwritten form that claimant testified the interpreter completed for her. (Tr., p. 36) Claimant testified she did not understand what the questionnaire said. It is written on the form that claimant was referred to therapy for "pain and cramp on [left] side of arm and shoulder." (Jt. Ex. 1, p. 31) It is also written that it started "all of a sudden" and was caused by "throwing pieces of product." Claimant testified that she did not say it happened "all of a sudden" when she first mentioned complaints about her left shoulder. (Tr., p. 54) In the actual physical therapy notes, it states "overuse, repetition mechanism." (Jt. Ex. 1, p. 33) Under treatment diagnosis it states "overexertion from repetitive movements." The therapist also noted that it started as a cramping pain and soreness in the left shoulder, and now the pain is sharp.

Claimant completed physical therapy, and returned to Dr. Harrer on February 24, 2021. (Jt. Ex. 3, p. 78) She reported some improvement from physical therapy. Dr. Harrer's diagnosis was left shoulder pain secondary to impingement subacromial bursitis. He offered an injection, but claimant declined since the prior injection in her right shoulder had not been helpful. (Jt. Ex. 3, p. 78; see also Tr., pp. 37-38) Dr. Harrer released claimant to return to work and placed her at MMI. Claimant returned to her regular position as a membrane skinner, and continued to use her left arm to throw the cleaned product. (Tr., p. 38)

Claimant had an independent medical evaluation (IME) with Sunil Bansal, M.D., on November 10, 2021. (Claimant's Exhibit 1) Dr. Bansal's report is dated February 17, 2022. (Cl. Ex. 1, p. 18) Dr. Bansal reviewed extensive medical records. (Cl. Ex. 1, pp. 1-14) He noted that claimant had worked at Tyson for seven years, and described her job as a membrane skinner. (Cl. Ex. 1, p. 14) He described her injury as using a hook with her right arm to throw pieces of ham, when the hook got stuck and she tried to repeat the throw and felt a pop in her right shoulder. He said within a few minutes, she could not raise her right arm up. He noted that once she returned to her job as a membrane skinner after surgery, she used mostly her left arm. She began to experience left shoulder pain, and again had several weeks of physical therapy.² Dr. Bansal noted that claimant continued to have bilateral shoulder pain, and struggled with raising either arm past shoulder level and that they fatigue easily. She also said she could not reach behind her back with either arm, or lift overhead. While she is able to lift a gallon of milk with either arm, she cannot do so repetitively.

Dr. Bansal performed testing and measured claimant's range of motion in both shoulders. (Cl. Ex. 1, p. 15; see also Tr., pp. 40-41) His diagnosis for the right shoulder was status post right rotator cuff repair, and he opined she reached MMI on October 8, 2020. (Cl. Ex. 1, p. 16) For the left shoulder, his diagnosis was aggravation of left shoulder impingement, and he placed her at MMI on the date of his examination, November 10, 2021. With respect to causation, he opined that claimant's right rotator cuff tear was caused when she attempted to throw the piece of ham from the hook on November 18, 2019. For the left shoulder, he opined that she developed left shoulder impingement as a result of overuse and overcompensation from her right shoulder pathology. He noted that she was using her left arm for most of her work activities, and in that type of situation, it is common to have contralateral arm rotator cuff pathology, as there will be excessive overreaching, abduction, and shoulder rotation forces, stressing the rotator cuff.

Dr. Bansal provided an impairment rating using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Cl. Ex. 1, p. 17) For the right shoulder, he provided a 10 percent upper extremity impairment, which is equal to 6 percent of the whole person. For the left shoulder, he provided a 5 percent upper extremity impairment, which is equal to 3 percent of the whole person. Both ratings were based on range of motion, using Figures 16-40 through 16-46. Dr. Bansal recommended no lifting greater than 10 pounds with the right arm, and 15 pounds with the left arm. He further recommended no overhead lifting with either arm, and no frequent reaching with either arm. For future care, he recommended intermittent steroid injections to both shoulders for maintenance.

Claimant continued to have pain in both shoulders, and eventually the employer sent her back to Dr. Harrer for additional treatment. (Tr., pp. 38-39) She saw Dr. Harrer on December 29, 2021, with complaints of ongoing shoulder pain, as well as a new complaint of upper extremity pain and numbness and tingling in the fingers. (Jt. Ex. 3, p.

² Dr. Bansal also states claimant had a steroid injection in her left shoulder, which is not correct.

80) Dr. Harrer diagnosed her with shoulder bursitis and right carpal tunnel syndrome. For her shoulder, he sent her for some physical therapy and started anti-inflammatories. She returned to Dr. Harrer on February 16, 2022. (Jt. Ex. 3, p. 81) At that time, she said that she had been getting better with physical therapy, but the previous Friday she was not doing anything and it aggravated her pain. She also complained of pain in her neck and back. Dr. Harrer felt the neck and back pain was a separate issue, and if it persisted he suggested she see a spine specialist. Regarding the right upper extremity, claimant's symptoms had subsided enough for her to return to work, and she was released from care.

On April 5, 2023, defense counsel wrote to Dr. Harrer seeking his opinion regarding the left shoulder condition, as well as Dr. Bansal's report. (Def. Ex. C) In the letter, counsel notes that Tyson's position with respect to the left shoulder complaints is that they are not sequela of her original injury, but a separate and distinct injury that occurred on December 15, 2020, when she was pulling product and had pain the left shoulder and a pop in the bicipital area. (Def. Ex. C, pp. 18-19) Counsel also outlined several portions of Dr. Bansal's report. (Def. Ex. C, p. 19) The letter indicates that counsel and Dr. Harrer had a telephone discussion, and then asks Dr. Harrer to confirm his opinions as written out by counsel in the letter. Dr. Harrer agreed with the statement that the first time claimant reported left shoulder symptoms to him was on January 13, 2021, and she described a specific incident of injury in which she felt a "pop" in her left bicipital area on December 15, 2020. (Def. Ex. C, p. 20) He also agreed that the left shoulder symptoms and resulting treatment were made necessary by the December 15, 2020 incident, which he described as "pulling some product and subsequently had pain," and were not a sequela of her November 18, 2019 injury. Finally, he agreed that he stands by his November 11, 2020 opinion that claimant sustained no ratable impairment in her right shoulder, that she is at MMI, and that she requires no permanent restrictions causally related to the November 18, 2019 work injury. Dr. Harrer signed the letter indicating his agreement on April 15, 2023. (Def. Ex. C, p. 21)

Dr. Bansal issued a supplemental report on April 27, 2023. (Cl. Ex. 1, pp. 20-24) He reviewed some additional, more recent medical records, as well as claimant's February 17, 2023 deposition. (Cl. Ex. 1, pp. 20-23) Dr. Bansal indicated that he disagreed with Dr. Harrer's opinion that claimant's left shoulder injury was an acute injury sustained at work. (Cl. Ex. 1, p. 23) He noted that claimant's testimony, supported by the records, including numerous physical therapy records, indicated that when claimant returned to work after her right shoulder injury, she relied more heavily on her left shoulder. He noted that the discomfort claimant experienced on December 15, 2020, occurred during her regular duties, and there were no unusual tasks or changes in weight of the products she handled that day. Rather, it was "simply shoulder discomfort arising from repetitive left shoulder work. The left arm was bearing a disproportionate workload due to her right shoulder pathology, consistent with an overcompensation mechanism." (Cl. Ex. 1, p. 23) Dr. Bansal concluded that after reviewing the notes from both Dr. Harrer and the physical therapist, it is clear that claimant continues to have diminished range of motion in her left shoulder, and would benefit from ongoing treatment. (Cl. Ex. 1, p. 24)

I find that claimant's left shoulder injury occurred as a result of overuse and/or overcompensation as a result of her prior right shoulder injury. Claimant credibly testified that after she returned to work in October 2020, she continued to experience pain in her right shoulder. As a result, she started to use her left arm more while working. She gradually developed left shoulder pain to the extent she reported it and sought treatment. (Tr., pp. 33-34) The handwritten records that indicate the pain came on suddenly were not completed by claimant personally, but through an interpreter. Likewise, claimant denies telling Dr. Harrer, through an interpreter, that she felt a pop in her left biceps/shoulder area. Rather, she said that she told the interpreter that the pain started because she had been using her left arm repetitively. This is supported by the physical therapy records, as well as Dr. Bansal's report. I find it is more likely than not that the injury resulted from overuse of the left arm as a result of the prior traumatic injury to claimant's right shoulder.

Claimant testified that her job as a membrane skinner essentially allows her to comply with the restrictions Dr. Bansal recommended. (Tr., p. 40) She does not reach her arms overhead, she does not lift anything more than 10 or 15 pounds. Additionally, while she does reach, she is not reaching constantly. At the time of hearing, she continued to experience pain in both of her shoulders, but her right shoulder was worse. (Tr., p. 41) Lifting with her arms makes her pain worse, and she is not able to lift her right arm overhead as high as she could before the injury. She has problems reaching up and behind that she did not have before. (Tr., pp. 41-42) The same is true for her left shoulder, including problems reaching overhead and behind her back that she did not have before. (Tr., p. 42) She takes Tylenol twice a day, which helps calm the pain.

Other than working at a slower pace, and using her left arm more than she did prior to the injury, much of claimant's job remains the same. Claimant testified that she has not missed any work since her return in October 2020 due to either shoulder. (Tr., p. 49) She continues to work full time with overtime, frequently working six day per week. (Tr., pp. 49-50) She has not requested to be moved to a different position or sought any special accommodations to perform her job duties. (Tr., p. 51) She likes her job and plans to continue working there in the future. (Tr., pp. 52-53)

Jorge Gonzalez Lopez testified on behalf of the defense. I found Mr. Gonzalez to be a credible witness. Mr. Gonzalez works as a front line supervisor at Tyson, and his job involves watching the employees every day and keeping an eye on the speed of production and the work being performed. (Tr., p 61) He is bilingual, and fluent in Spanish, so he is able to communicate with claimant directly. (Tr., pp. 61-62) At the time of hearing, he had been a supervisor with Tyson for 8 years, but had only been claimant's direct supervisor for 8 months. (Tr., p. 65) Prior to becoming claimant's supervisor, he was a "backup general," which required him to cover other supervisors from other lines. (Tr., p. 68) He testified that during the time he has directly supervised claimant, she has done her job successfully, and he is not aware of any difference in the way she does the job versus any other employees. (Tr., pp. 64-65) She has never indicated to him that there is any aspect of the job she cannot perform at full capacity.

(Tr., p. 66) She has never indicated to him that she cannot keep up with the speed of the line, and he has not had any issues with her keeping up with the job. (Tr., pp. 65-66)

Mr. Gonzalez testified that he knew a little about claimant's treatment after her return to work in October 2020, but he was not aware of the extent of treatment. (Tr., pp. 68-69) He also was not aware that when claimant was discharged from physical therapy, she continued to complain of aching pain in her shoulders, and that she was discharged with goals unmet. (Tr., pp. 69-70) He agreed that she is someone who needs to work and wants to have a job, and she works hard. (Tr., p. 70) He agreed that she is an honest person and is not a whiner, and is the kind of person who pushes through and tries to do the job the best she can. He agreed that he does not watch her work every minute of every day, so it is possible there are others who work faster than she does. However, he reiterated that she has never told him she is slower than others, and he has not observed her to be any slower than anyone else. (Tr., p. 73) He also confirmed that he has not had any complaints from anyone who works with claimant that she is slower or not able to keep up, or that she is not doing her job the same way as everyone else. (Tr., pp. 76-77)

Claimant seeks permanent partial disability benefits based on Dr. Bansal's impairment rating. Defendant argues that Dr. Harrer's zero percent rating is entitled to greater weight, as he was the treating physician who saw claimant on a regular basis as opposed to Dr. Bansal's one-time evaluation. Dr. Harrer did not provide the tables in the AMA Guides to which he referred in providing his zero percent rating, however. (Def. Ex. B, p. 17) To the contrary, Dr. Bansal provided range of motion measurements, and used those measurements to provide an impairment rating for each shoulder, using Figures 16-40 through 16-46. (Cl. Ex. 1, pp. 16-17) Additionally, claimant testified that she has continued to experience pain and limitations in both shoulders, but she works through the pain as she wants to continue to work and contribute to her family financially. (Tr., p. 57) Given that claimant had surgery on her right shoulder, and continues to experience pain and limitations with range of motion in both shoulders, I find she has sustained permanent partial disability in both shoulders. I find Dr. Bansal's impairment rating to be a more reliable representation of the extent of that disability. As such, I find claimant has sustained a 10 percent right upper extremity impairment, which is equal to 6 percent of the whole person, and a 5 percent left upper extremity impairment, which is equal to 3 percent of the whole person. Using the combined values chart on page 604 of the AMA Guides, 6 percent and 3 percent equal a combined rating of 9 percent of the whole person. Therefore, claimant is entitled to 45 weeks of permanent partial disability benefits.

CONCLUSIONS OF LAW

The parties agree that claimant sustained a compensable injury to her right shoulder on November 18, 2019. The parties disagree regarding the extent of permanent partial disability, if any. The parties also dispute whether claimant sustained a sequela injury to her left shoulder. Defendant argues that the left shoulder injury is not a sequela, but a separate and distinct injury that has not been pled.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e). The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (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, 128 (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 at 311. 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, 3 (Iowa 2000); Miedema, 551 N.W.2d at 311. 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 at 150. An employee does not cease to be in the course of employment merely because the employee is not actually engaged in doing some specifically prescribed task, if, in the course of employment, the employee does some act which he or she deems necessary for the benefit or interest of the employer. United Parcel Serv. v. Miller, No. 99-1596, 2000 WL 1421800, at *1 (Iowa Ct. App. Sept. 27, 2000) (citing Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979)).

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 an injury occurs in the course of employment, the employer is liable for all the consequences that “naturally and proximately flow from the accident.” Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated: “If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable.” Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient

evidence that the disability was naturally and proximately related to the original work injury.

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). A sequela can be an after-effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). One form of sequela is an adverse effect from medical treatment for the original injury. Where treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Yount v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone Tire, File No. 966020, (Arb. February 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File Nos. 854465, 877068, (Arb. February 21, 1991).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., Ill Iowa Ind. Comm. Rep. 257, 258 (1982).

Defendant argues that because claimant experienced a "pop" in her left shoulder, there was a separate and distinct injury, and the left shoulder injury was not a sequela of the earlier right shoulder injury. Defendant compares this case to Johnson v. Second Injury Fund of Iowa, File No. 5048878 (Arb., April 5, 2016) and Powers v. Trimark Physicians Group, File No. 5012217 (Arb., Sept. 28, 2005). In each of those cases, the claimant was found to have sustained two separate and distinct injuries rather than one injury and a sequela. In Johnson, the claimant performed significant repetitive work, primarily using her right hand, and developed a cumulative work injury. After surgery, she returned to work with restrictions for the right arm. She continued to perform essentially the same duties, but used her left arm instead. As a result, she developed the same condition in her left hand as she had previously in her right. The deputy found that using her left hand to perform duties for the employer was a separate and discrete injury process that resulted in an injury to the left arm. The deputy compared it to Jackson v. Centeon Bio Services, File 1169622 (App., December 1999). That case held that where a claimant suffers a work injury resulting in right carpal tunnel syndrome, then returns to work and, as a result of using her left hand more, later develops left carpal tunnel syndrome, the claimant has two separate injuries.

Similarly in Powers, the claimant performed repetitive work primarily with her right hand, until developing an intense, burning pain in her right forearm and elbow. She was placed on restrictions and as a result began completing the same work duties using her left hand, and subsequently developed similar symptoms in her left arm. The deputy in Powers also cited to Jackson, and found that the left arm injury was a separate and distinct work injury, and not a sequela of the right arm injury.

While these cases appear somewhat similar to the situation here, there are key differences that make them distinguishable. Both Johnson and Powers involved claims against the Second Injury Fund of Iowa, and the question was whether the claimant had sustained a second qualifying injury for Fund purposes. Additionally, in those cases, each claimant sustained a cumulative, repetitive motion injury in the first instance, and while on restricted duty, resumed the same repetitive activities with the opposite limb and developed the same cumulative injuries on the opposite side. In this case, however, the claimant's first injury was the result of a traumatic incident in which she tore her right rotator cuff while trying to fling a piece of meat off a meat hook. The second injury to her left shoulder developed gradually, and was diagnosed as left shoulder impingement subacromial bursitis. The physical therapy records repeatedly note a diagnosis of left shoulder pain due to overexertion from repetitive movements. And finally, Dr. Bansal's first report notes that claimant's left shoulder impingement developed as a result of overuse and overcompensation from her right shoulder pathology. He notes it is common in these situations to have "contralateral arm rotator cuff pathology," as there will be excessive overreaching, abduction, and shoulder rotation forces stressing the rotator cuff. His addendum to his report also indicates that claimant's "left arm was bearing a disproportionate workload due to her right shoulder pathology, consistent with an overcompensation mechanism."

This case is more similar to Weimerskirch v. Progressive Processing, LLC, File No. 1655936.01 (App., March 21, 2023). In that case, as here, there was medical evidence indicating that the claimant performing his job with only one arm "would be much more stressful on the shoulder joint" than performing it with two arms. The Commissioner found that "the increased stress on the shoulder joint created by the one-arm activity is akin to the development of lower back pain caused by an altered gait following an injury to the leg." As a result, the claimant had established a sequela injury. Likewise in Palacios v. HNI Corp., File Nos. 5041696; 5046904 (App. Jan. 17, 2017), the claimant had returned to work following left shoulder surgery, and began to use her right shoulder more in order to compensate for her inability to use her left shoulder. The commissioner held that the right shoulder problem "flowed" from the left shoulder problem, making it a sequela of the left shoulder injury. (See also Khourassani v. Swift & Co., File No. 5026395 (Arb. June 7, 2010), holding the left shoulder injury a sequela when claimant used the left shoulder more to compensate for right shoulder pain).

The only opinion in the record that claimant's left shoulder injury was not a sequela of the right is Dr. Harrer's indication that he agreed with defense counsel's statements on April 15, 2023. The problem with Dr. Harrer's opinion is that it is based on claimant having sustained a specific incident on December 15, 2020, in which she

was “pulling some product and subsequently had pain,” and felt a “pop” in her bicipital area. The issue with those descriptions of the injury is that they were not provided by claimant; they were provided by an interpreter. Claimant credibly and consistently denied that she heard a pop or that she ever told the interpreter the pain started suddenly. Claimant was a credible witness, and her supervisor agreed she is an honest person. I find claimant’s left shoulder pain came on gradually as a result of overuse from repetitive motion, after claimant began to use her left arm more while working following her right shoulder injury. Claimant has proven that she sustained a sequela injury to her left shoulder.

Two shoulder injuries occurring in a single incident are compensated pursuant to Iowa Code section 85.34(2)(v). Carmer v. Nordstrom, Inc., File No. 1656062.01 (App., Dec. 29, 2021). Claimant returned to work at Tyson earning the same or greater salary, wages, or earnings as she received at the time of the injury. Under Iowa Code section 85.34(2)(v):

[i]f an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee’s functional impairment rating resulting from the injury, and not in relation to the employee’s earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee’s functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee’s earning capacity caused by the employee’s permanent partial disability.

Therefore, under the statute, claimant’s recovery is limited to her functional loss. I found Dr. Bansal’s impairment rating to be most credible and accurate. Using the combined values chart, I found that claimant has sustained a combined impairment of 9 percent of the body as a whole. Multiplying this percentage by 500 weeks, claimant is entitled to 45 weeks of permanent partial disability benefits. Defendant is entitled to a credit due to an overpayment of temporary disability benefits previously paid, pursuant to Iowa Code section 85.34(5) and the stipulation of the parties.

The parties disagree regarding the proper date for commencement of permanent partial disability benefits. Claimant believes the proper commencement date is November 10, 2021, the date on which Dr. Bansal placed claimant at MMI for the left shoulder. Defendant argues that should the left shoulder be determined to be a sequela, the proper commencement date is February 24, 2021, which is the date Dr. Harrer placed claimant’s left shoulder at MMI. (Def. Brief, pp. 9-10) Defendant notes that Dr. Bansal chose the date of his examination as the date of MMI for the left shoulder, which

seems to be arbitrary. Dr. Bansal also did not have Dr. Harrer's February 24, 2021, office note for review when he chose that date. Furthermore, Dr. Bansal agreed with Dr. Harrer on the date of MMI for the right shoulder. I agree with defendant that Dr. Harrer's date of MMI makes more sense with the record and more properly reflects claimant's course of treatment. Therefore, I find that permanent partial disability benefits should commence on February 24, 2021.

Finally, claimant has requested costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. I find that claimant was successful in her claim, and an award of costs is appropriate. I exercise my discretion and award claimant the cost of the filing fee in the amount of \$103.00, and the cost of the service fee, sent to two separate locations, in the total amount of \$15.06. (Cl. Ex. 6, pp. 51-58) As noted above, defendant agreed to pay Dr. Bansal's IME bill, so that cost is no longer at issue.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant forty-five (45) weeks of permanent partial disability benefits, commencing February 24, 2021, at the stipulated rate of five hundred fifty and 22/100 dollars (\$550.22).

Defendant shall be entitled to a credit for any overpayment of temporary disability benefits pursuant to Iowa Code section 85.34(5).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendant shall reimburse claimant's costs in the total amount of one hundred eighteen and 06/100 dollars (\$118.06), which includes the filing and service fees.

Defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 4th day of October, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Chris Scheldrup (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, 10A) 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.