

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROD SCHULDT,

Claimant,

vs.

EAST PENN MANUFACTURING,

Employer,

and

SENTINEL INSURANCE,

Insurance Carrier,
Defendants.

File No. 1655580.03

ARBITRATION DECISION

Head Note Nos.: 1800, 1803, 1803.1

STATEMENT OF THE CASE

The claimant, Rod Schuldt, filed a petition for arbitration seeking workers' compensation benefits from employer East Penn Manufacturing ("East Penn"), and their insurer, Sentinel Insurance Company, Ltd. Jason Neifert appeared on behalf of the claimant. Tiernan Siems appeared on behalf of the defendants. Also present was the claimant's legal intern, Maria Fiordelisi.

The matter came on for hearing on June 15, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-28. The exhibits were received into the record without objection.

The claimant testified on his own behalf. Janice Doud was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on August 12, 2022, after briefing by the parties.

STIPULATIONS

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

1. There was an employer-employee relationship at the time of the alleged injury.
2. That the claimant sustained an injury which arose out of, and in the course of employment on October 16, 2018.
3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That the alleged injury is a cause of permanent disability.
5. That the commencement date for permanent partial disability benefits, if any are awarded, is February 11, 2020.
6. That the claimant had gross weekly earnings of nine hundred sixteen and 53/100 dollars (\$916.53) per week, was married, and was entitled to two exemptions at the time of the alleged injury. This provided a weekly compensation rate of five hundred ninety-eight and 02/100 dollars (\$598.02).
7. That the defendants are entitled to a credit pursuant to Joint Exhibits 25 and 27.
8. That the costs listed in Joint Exhibit 26, page 177, were paid.

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

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent disability, if any is awarded.
2. Whether the permanent disability should be evaluated as an industrial disability or a scheduled member disability.
3. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Rod Schuldt, the claimant was 65 years old at the time of the hearing. (Testimony). He lived in Van Wert, Iowa, where he has resided for his entire life.

(Testimony). He is married, and has two adult children. (Testimony). He completed high school. (Joint Exhibit 17:134).

Mr. Schuldt first worked as a construction laborer in Osceola, Iowa. (Testimony). He framed new homes. (Testimony). Mr. Schuldt testified that this was physically intensive labor. (Testimony). It involved hammering, sawing, climbing ladders, and installing roofing. (Testimony). He had no problems performing the physical functions of the job, nor did he have any injuries on the job. (Testimony). Mr. Schuldt felt that he could no longer perform this job after his subsequent work injury because of his physical condition and/or limitations. (Testimony).

The claimant then moved to Crestline Windows, in Leon, Iowa. (Testimony). At Crestline, he began by building storm windows. (Testimony). He eventually progressed to a supervisory position as a production leader. (Testimony). He constructed windows, including building frames, putting glass in and working on shipping. (Testimony). He testified that he had no physical issues performing this job, and sustained no injuries while on the job. (Testimony). He further testified that he could not return to this job because the lifting involved would be too much. (Testimony).

Mr. Schuldt then became a production manager at Survivor Systems. (Testimony). He eventually moved into a field position, where he fixed problems with windows in people's homes. (Testimony). This involved substantial travel throughout Iowa, Missouri, Kansas and Illinois. (Testimony). He also serviced Lowe's stores. (Testimony). He drove 1,200 to 1,300 miles per week. (Testimony). He worked there for 12 years. (Testimony). He had no difficulty performing this job, and did not have any injuries. (Testimony). He testified that he could not return to this job today because he could not handle the lengthy driving periods, or the lifting, or climbing ladders required of this job. (Testimony).

The claimant's next job was with East Penn in 2009. (Testimony). Prior to beginning employment with East Penn, he had a pre-employment physical, which presented him with no restrictions or limitations. (Testimony). Mr. Schuldt indicated that he had a past medical history of heartburn at night, but noted no other issues. (JE 16:130-132). He checked a line that he was in good health. (JE 16:131). A physician assistant examined the claimant and noted that he had a normal physical examination and lab results. (JE 16:132). The examiner considered him medically qualified for all jobs without restrictions. (JE 16:132).

At East Penn, he built batteries for vehicles. (Testimony). He was originally hired to run a cast on machine. (Testimony). The machine casts the lead on the battery groups that go inside of a battery case. (Testimony). He would have to load and unload the battery, lift it, and set it on a table. (Testimony). Another employee would put the battery into its case. (Testimony). He built batteries ranging in weight from 18 to 30 pounds. (Testimony). He lifted every battery three times, and his goal was to complete 700 to 800 batteries per day. (Testimony). Mr. Schuldt had to stand every day for his shift. (Testimony).

At the time of his injury, Mr. Schuldt made sixteen and 85/100 dollars (\$16.85) per hour. (Testimony). He averaged earnings between twenty-one and 00/100 dollars (\$21.00) and twenty-five and 00/100 dollars (\$25.00) per hour due to performance incentives for completed batteries over 600. (Testimony). East Penn would set the average annually based upon an employee's previous performance. (Testimony).

In 2016, Mr. Schuldt injured his left shoulder and right wrist while working on a gate at a rodeo. (Testimony). He let a bull out, and the gate hit him. (Testimony). He tore ligaments in his left shoulder and broke the top of his right hand in two places. (Testimony). He was off work for six months following the injury. (Testimony). East Penn would not allow him back to work until he was 100 percent recovered with no restrictions. (Testimony).

On October 16, 2018, Mr. Schuldt was struck in the back of the head by a forklift. (Testimony). Mr. Schuldt testified that he fell to his right and landed on the right side of his body. (Testimony). The forklift then came to a stop on his left heel. (Testimony). Mr. Schuldt testified that he remembered "coming to" or awakening, and telling the forklift driver to get off of him. (Testimony). The forklift drove off of him. (Testimony). Mr. Schuldt provided a recorded statement to an insurance adjuster. (JE 17:139). He noted that he injured his left foot, left ankle, right wrist on the back side of his arm, right shoulder, and lower back. (JE 17:139).

Wayne County Ambulance Service was called. (JE 1:1). Upon arrival, the EMS provider noticed Mr. Schuldt laying on the floor. (JE 1:1). Mr. Schuldt's co-workers placed towels under his head and left ankle for comfort. (JE 1:1). EMS found Mr. Schuldt to be alert and oriented. (JE 1:1). He could recite his "ABCs." (JE 1:1). Mr. Schuldt told EMS that he landed on his right arm and side, as evidenced by a small abrasion on his right elbow. (JE 1:1). He denied hitting his head or passing out. (JE 1:1). EMS noted that the claimant had significant swelling and slight bruising to the left ankle. (JE 1:1). Mr. Schuldt was transferred to an ambulance, and was taken to the emergency room at Wayne County Hospital. (Testimony; JE 1:1; JE 2:2-4).

Upon arrival at Wayne County Hospital, Babar Ahmed, M.D., examined Mr. Schuldt, in the emergency department. (JE 2:2-4). Mr. Schuldt complained of moderate pain and numbness along his left ankle and foot. (JE 2:2). Pain worsened with movement. (JE 2:2). Mr. Schuldt also had pain with movement in his right wrist. (JE 2:2). Upon examination Dr. Ahmed noted that the claimant displayed tenderness to palpation around the Achilles' tendon. (JE 2:3). Dr. Ahmed observed a "moderate amount" of swelling in the left foot. (JE 2:3). Mr. Schuldt had x-rays taken of his wrist, shoulder, and back. (Testimony; JE 2:3). The wrist x-rays showed no fracture or dislocation. (JE 2:3). The left ankle and foot x-rays showed no fractures. (JE 2:3). A CT scan was also done, which showed soft tissue swelling over the left ankle and foot, along with fluid adjacent to the Achilles' tendon. (JE 2:3). The Achilles' tendon was "grossly intact." (JE 2:3). Dr. Ahmed observed mild spurring of the medial ankle mortise and a moderate plantar spur. (JE 2:3). Dr. Ahmed diagnosed Mr. Schuldt with a left ankle and foot contusion and sprain. (JE 2:3). Dr. Ahmed placed the claimant in a walking boot, and recommended he remain nonweightbearing. (JE 2:3). He prescribed

Naproxen and Tramadol for the claimant's pain. (JE 2:3). Dr. Ahmed also told the claimant to elevate and ice his foot. (JE 2:3-4). Mr. Schuldt was to follow-up with Dr. Metzger the next day. (JE 2:4). He also had a severe headache, which he felt the hospital did not address. (Testimony).

An employee called Rusty Meyer, R.N., to report Mr. Schuldt's injury on October 16, 2018. (JE 3:5). Nurse Meyer noted that the claimant would see "Metzger tomorrow" if needed. (JE 3:5).

On October 17, 2018, Nurse Meyer called Mr. Schuldt. (JE 3:5). Mr. Schuldt recounted the work incident. (JE 3:5). He told Nurse Meyer that he was "not doing too good [sic]," and that his midfoot area was numb and cold, while his ankle was swollen. (JE 3:5). He rated his ankle pain 4 out of 10. (JE 3:5). Mr. Schuldt also told Nurse Meyer that his lower back hurt, and that he developed a headache. (JE 3:5).

Joshua Kimelman, D.O., examined Mr. Schuldt at Iowa Ortho on November 13, 2018. (JE 4:6-8). The claimant described the work incident to Dr. Kimelman. (JE 4:6). Mr. Schuldt complained of aching right shoulder pain, aching right forearm pain, aching low back pain and aching left foot pain. (JE 4:6). He rated his left foot pain 5 out of 10, his low back pain 6-8 out of 10, right forearm pain 4 out of 10, and right shoulder pain 3 out of 10. (JE 4:6). Dr. Kimelman reviewed an MRI, which he noted showed a "small avulsion-type fracture of the calcaneus, and otherwise no bony injury, but there is edema of the distal calcaneocuboid joint, and he has an area of cystic change and loss of cartilage over the medial side of his talus." (JE 4:7). Dr. Kimelman opined that the cystic change and loss of cartilage appeared chronic. (JE 4:7). Upon examination, his right shoulder had a full range of motion without pain. (JE 4:7). His right wrist had full pronation and supination with crepitation over his distal radioulnar joint. (JE 4:7). An MRI of the right wrist showed degenerative changes of the distal radioulnar joint. (JE 4:7). Dr. Kimelman redressed the left foot and ankle, and told Mr. Schuldt that he could weight-bear as tolerated in a Bledsoe boot. (JE 4:7). He was to remove the Bledsoe boot when he was not walking. (JE 4:7). Dr. Kimelman referred the claimant to Dr. Joe Galles and a hand doctor for care. (JE 4:7).

Brian Trout, D.P.M., examined the claimant on November 26, 2018, at Iowa Ortho. (JE 6:27-29). Mr. Schuldt complained of pain that he rated 6 out of 10 in his left foot. (JE 6:27). At the time of his examination, Mr. Schuldt wore a CAM walker and was partially weightbearing with crutches. (JE 6:27). Mr. Schuldt developed sores following the injury, and the CAM walker caused him increased pain due to pressure. (JE 6:27). Mr. Schuldt also complained of complete numbness in his heel. (JE 6:27). Dr. Trout diagnosed Mr. Schuldt with a crushing injury of the left ankle, a pressure ulcer of the left medial and lateral hindfoot, neuralgia and neuritis, and a subungual hematoma of the great toe of the left foot. (JE 6:28). Dr. Trout allowed Mr. Schuldt to discontinue the use of the CAM walker, but he was to remain on crutches. (JE 6:28). Dr. Trout explained that the numbness in Mr. Schuldt's foot could take up to 18 months to resolve. (JE 6:28). Dr. Trout ordered therapy, and placed him on modified/sedentary duty. (JE 6:28).

Benjamin Paulson, M.D., cared for the claimant on November 27, 2018, at Iowa Ortho. (JE 8:58-59). Mr. Schuldt rated his pain in his right wrist 6 out of 10. (JE 8:58). He described his pain as aching, sharp, and throbbing. (JE 8:58). Movement aggravated his pain. (JE 8:58). Mr. Schuldt recounted falling at work, and also noted his previous injury. (JE 8:58). X-rays of the right wrist showed no acute fractures or dislocations; however, Dr. Paulson noted degenerative changes at "DRUJ" with bone spurring, and an ulnar positive variance. (JE 8:59). Dr. Paulson diagnosed Mr. Schuldt with osteoarthritis of the right wrist, and right ulnar wrist pain. (JE 8:59). Dr. Paulson told Mr. Schuldt how to use a brace and restricted him from using his right hand at work. (JE 8:59).

On December 4, 2018, Dr. Kimelman examined Mr. Schuldt again. (JE 4:9-11). Mr. Schuldt complained of right shoulder pain that he rated 2 out of 10. (JE 4:9). The pain radiated to numbness in the right hand. (JE 4:9). His hands tingled when driving. (JE 4:9). His right forearm pain was rated 2 out of 10. (JE 4:9). Mr. Schuldt rated his low back pain 2 out of 10, and indicated that it was achy and persistent. (JE 4:9). Mr. Schuldt noted that there was no radiation of pain in his lower back. (JE 4:9). Upon examination, Dr. Kimelman observed that the claimant walked on the ball of his foot due to complaints of pain in his heel. (JE 4:10). Dr. Kimelman continued, "[h]e seems to - have symmetric give-out weakness of dorsiflexion of the foot and extensor hallucis bilaterally." (JE 4:10). Dr. Kimelman recommended that the claimant follow-up with the wound center regarding debridement of his foot. (JE 4:10). He further recommended that the claimant bear as much weight as he was comfortable with in order to wean himself off of crutches. (JE 4:10). Dr. Kimelman noted that Mr. Schuldt should not let his foot hang passively, as that caused swelling. (JE 4:10).

Dr. Trout examined Mr. Schuldt again on December 10, 2018, at Iowa Ortho. (JE 6:30-31). Mr. Schuldt had a mild, but stable ulcer on his left foot. (JE 6:30). Mr. Schuldt ambulated with a single crutch. (JE 6:30). Mr. Schuldt had not felt much improvement since his prior visit. (JE 6:30). He also complained of pain in his neck and arms from the work injury. (JE 6:30). Dr. Trout debrided the left medial hindfoot ulcer. (JE 6:31). Dr. Trout instructed the claimant to cover the ulcers and blister with Xeroform and a dressing. (JE 6:31). Dr. Trout also instructed the claimant to continue physical therapy and to wean off using a crutch. (JE 6:31).

Mr. Schuldt returned to Iowa Ortho to visit with Dr. Kimelman on December 20, 2018. (JE 4:12-14). Dr. Kimelman examined Mr. Schuldt for right shoulder pain, which he rated 5 out of 10. (JE 4:12). Mr. Schuldt explained that he had a sharp, burning pain when he lifted his arms. (JE 4:12). Dr. Kimelman also examined the claimant for low back pain, which Mr. Schuldt rated 5 out of 10. (JE 4:12). Mr. Schuldt described his pain as achy, and told Dr. Kimelman that bending, lying flat, and nighttime aggravated his pain. (JE 4:12). Mr. Schuldt also complained of headaches, and tingling and numbness in his hands since the accident. (JE 4:12). Mr. Schuldt claimed that he had headaches since the accident, but Dr. Kimelman told Mr. Schuldt that he did not recall any such conversation with him since his first visit on November 13, 2018. (JE 4:12). Mr. Schuldt was using a cane for assistance with walking. (JE 4:13). On physical examination, Mr. Schuldt demonstrated a "full range of motion" in his cervical spine. (JE

4:13). Mr. Schuldt complained of pain into the right shoulder with side-bending to the right. (JE 4:13). Dr. Kimelman found no weakness in the claimant's upper extremities, but Mr. Schuldt noted a "sense of tingling or numbness in all 5 fingers of both hands with Phalen's test after a minute." (JE 4:13). Dr. Kimelman found no intrinsic atrophy in the elbow and wrist. (JE 4:13). Mr. Schuldt complained of pain with bending over, although he had full extension of his lower back and had no noted paravertebral spasm. (JE 4:13). Dr. Kimelman noted that he reviewed the original emergency room records, and that he had no opinion on whether the claimant had a head injury or a concussion. (JE 4:13). Dr. Kimelman further opined that Mr. Schuldt showed no evidence of rotator cuff tearing in the right shoulder, nor did he have any tension signs regarding back pain. (JE 4:13). Dr. Kimelman recommended that the claimant have a bone scan to rule out an occult injury. (JE 4:13-14).

Dr. Paulson also examined Mr. Schuldt on December 20, 2018, at Iowa Ortho, for the claimant's continued right wrist pain. (JE 8:60-61). The claimant rated his pain 5 out of 10. (JE 8:60). He described it as aching, and aggravated by movement. (JE 8:60). Mr. Schuldt also complained of numbness and tingling in his bilateral hands. (JE 8:60). Dr. Paulson noted that the claimant had decreased active range of motion. (JE 8:61). He diagnosed the claimant with right wrist pain, and primary osteoarthritis of the right wrist. (JE 8:61). Dr. Paulson recommended that the claimant not repetitively use his right hand. (JE 8:61). He also recommended that the claimant have an "MRA" of the right wrist. (JE 8:61).

On January 29, 2019, Dr. Kimelman re-examined Mr. Schuldt at Iowa Ortho. (JE 4:15-17). Mr. Schuldt rated his right shoulder pain 1 out of 10, and told the doctor that it only occurred occasionally. (JE 4:15). Mr. Schuldt rated his low back pain 1 out of 10, and told the doctor that the pain fluctuated. (JE 4:15). Lifting aggravated his pain. (JE 4:15). Mr. Schuldt told the doctor that his foot was getting better, and that the wound in his heel was "well healed." (JE 4:15). He also no longer used an assistive device to walk. (JE 4:15). Mr. Schuldt noted less problems with headaches, but he noticed when they occurred. (JE 4:15). Upon examination, Dr. Kimelman found Mr. Schuldt to have good strength with minimal impingement to the right shoulder. (JE 4:16).

Mr. Schuldt returned to Iowa Ortho on February 13, 2019, where Trevor Schmitz, M.D., examined him for neck pain. (JE 11:88-90). Mr. Schuldt complained of moderate neck pain that was aggravated by flexion and daily activities. (JE 11:88). He complained that his pain progressively worsened since being struck in the head by a forklift. (JE 11:88). He rated his neck pain 1 out of 10. (JE 11:88). Upon physical examination, Dr. Schmitz found the claimant to have a normally aligned neck with functional range of motion. (JE 11:89). An x-ray of the cervical spine showed no evidence of misalignment. (JE 11:89). However, the x-ray showed mild disc degeneration at C5, C6, and C6 C7, along with multilevel facet arthropathy. (JE 11:89). Dr. Schmitz diagnosed the claimant with cervical radiculopathy, neck pain, and dorsalgia. (JE 11:89-90). Dr. Schmitz recommended an MRI of the cervical spine and an EMG of the bilateral upper extremities due to the claimant's complaints of numbness and tingling. (JE 11:90). Dr. Schmitz continued by recommending a referral to a shoulder specialist. (JE 11:90).

Sara Tedford, P.T., from Decatur County Hospital, issued a physical therapy report on February 20, 2019. (JE 10:81-82). Mr. Schuldt had completed 16 visits for a right shoulder contusion due to a work injury, since his initial appointment on January 2, 2019. (JE 10:81). As a result of therapy, his pain decreased and strength increased. (JE 10:81). The therapist opined that the claimant progressed well with physical therapy for his right shoulder pain. (JE 10:82). The claimant had not yet met his strength and range of motion goals. (JE 10:82). His low back pain and left foot pain were most limiting in his function and ability to meet his goals in therapy. (JE 10:82). The therapist provided the claimant with a home exercise program and recommended no further skilled physical therapy. (JE 10:82).

On February 22, 2019, Matalie Place, P.T.A. of Decatur County Hospital, issued a physical therapy report concerning the claimant's low back pain. (JE 10:83-84). Mr. Schuldt attended 21 visits and canceled three. (JE 10:83). Through therapy, he decreased his pain and increased his strength. (JE 10:83). He also increased his range of motion in his lower back. (JE 10:83). Ms. Place noted that Mr. Schuldt's progress was inconsistent and frequent imaging caused his pain levels to increase. (JE 10:84). Ms. Place continued, "[r]ecent imaging for lumbar MRI revealed co-morbidity that may or may not have an impact for lumbar spine rehab." (JE 10:84). Mr. Schuldt did not comply with his home exercise plan. (JE 10:84). The therapist concluded that the claimant would benefit from additional skilled therapy to increase core and lower extremity strength. (JE 10:84).

Ms. Tedford also provided a physical therapy report concerning the claimant's left ankle and foot issues. (JE 10:85-86). Mr. Schuldt attended 15 out of 18 physical therapy appointments since commencing therapy on December 3, 2018. (JE 10:85). His gait improved, and pain decreased throughout therapy. (JE 10:85). Ms. Tedford found the claimant to be progressing slowly with therapy. (JE 10:86). He had limited range of motion, and continued to ambulate with an antalgic gait secondary to pain. (JE 10:86).

On March 28, 2019, the claimant followed-up with Dr. Trout at Iowa Ortho for his left foot issues. (JE 6:32-33). Mr. Schuldt continued to complain of swelling and pain. (JE 6:32). Dr. Trout noted that the pain was diffuse throughout Mr. Schuldt's left ankle and foot. (JE 6:32). Mr. Schuldt's left great toenail was "very loose and nearly falling off from the crush injury." (JE 6:32). There were issues wearing a splint due to lead exposure regulations and transferring the splint between work and home. (JE 6:32). Dr. Trout told Mr. Schuldt that "at this point past his injury, it is likely that his foot is going not [sic] to improve immensely." (JE 6:33). Dr. Trout recommended continued physical therapy as long as his back surgeon deemed it appropriate. (JE 6:33). Mr. Schuldt was working modified duty with four hours per day on sedentary duty. (JE 6:33). He was also to ice and elevate his foot as needed. (JE 6:33). Dr. Trout dispensed a heel lift. (JE 6:33).

Mr. Schuldt returned to Dr. Kimelman's office at Iowa Ortho for another examination on April 2, 2019. (JE 4:18-19). Mr. Schuldt complained of low back pain, which he rated 3 out of 10. (JE 4:18). He told the doctor that his pain was stable and

persistent. (JE 4:18). His back pain woke him up in the middle of the night. (JE 4:18). Dr. Kimelman noted that the claimant was to have back surgery due to neoplasms in his back. (JE 4:18). Dr. Kimelman opined that "the fact that his back pain wakes him up at night and is not strictly related to activity does get some concern that the neoplasm in his spine is related to his lower back pain." (JE 4:18). He also continued to have right shoulder pain. (JE 4:19). Dr. Kimelman diagnosed the claimant with a contusion of the right shoulder and a left-sided low back pain without sciatica. (JE 4:19). Since the claimant was scheduled to have back surgery, Dr. Kimelman held off on ordering an MRI for the right shoulder and neck. (JE 4:19). Dr. Kimelman kept the claimant on restricted, sedentary duty with a 10-pound lifting restriction. (JE 4:19).

Mr. Schuldts returned to Dr. Trout's office on May 1, 2019, for additional follow-up on his left foot ulcer. (JE 6:34-36). Mr. Schuldts still had occasional pain across his left ankle joint. (JE 6:34). Mr. Schuldts stopped attending physical therapy for several weeks due to complications from his previous back operation. (JE 6:34). His left foot showed decreased range of motion. (JE 6:35). Dr. Trout diagnosed Mr. Schuldts with transient synovitis of his left ankle. (JE 6:35). He provided Mr. Schuldts with an injection into his left ankle. (JE 6:35). Dr. Trout recommended that the claimant hold on physical therapy for two weeks, at which time, he would continue therapy. (JE 6:35).

Eventually, a tumor was discovered in Mr. Schuldts back. (Testimony). The tumor was determined to be unconnected to his work injury. (Testimony). The tumor was benign and was removed in May of 2019. (Testimony). Mr. Schuldts testified that, after removal of the tumor, he continued to have lower back issues that he associated with his work injury. (Testimony).

Dr. Trout saw Mr. Schuldts again on June 3, 2019, for his continued left foot issues. (JE 6:37-38). Mr. Schuldts continued to have swelling of his left ankle and lower leg. (JE 6:37). The previous injection provided great relief. (JE 6:37). Mr. Schuldts told Dr. Trout that he had return of sensation in his left heel. (JE 6:37). He also returned to therapy for his foot and ankle. (JE 6:37). He demonstrated an ability to walk with a limp, but standing in one place was difficult for him. (JE 6:37-38). Dr. Trout recommended that the claimant give his left foot and ankle more time to heal. (JE 6:38). He allowed the claimant to increase his daily activities as tolerated, as Dr. Trout explained that the claimant would not damage his foot further by undertaking normal activities. (JE 6:38).

On June 6, 2019, Dr. Kimelman re-examined Mr. Schuldts following a right shoulder MRI. (JE 4:20-21). Mr. Schuldts rated his right shoulder pain 2-3 out of 10. (JE 4:20). Mr. Schuldts was previously released by his spine surgery following removal of a benign lesion in his lower back. (JE 4:20). He continued to have some lower back pain when he bended, twisted, or lifted. (JE 4:20). He used a weed whacker, which caused him to have increased pain. (JE 4:20). Dr. Kimelman noted that Mr. Schuldts right shoulder pain was located over the acromioclavicular joint. (JE 4:20). A previously conducted MRI showed a posterior interior labral tear with cyst formation and acromioclavicular arthritis. (JE 4:20). Upon examination, Dr. Kimelman observed that Mr. Schuldts had full range of motion in the right shoulder. (JE 4:21). Dr. Kimelman

opined that Mr. Schuldt's labral tear was "probably unrelated to his fall," and that Mr. Schuldt did not really "need" a labrum. (JE 4:21). The acromioclavicular pain may be the result of his work injury, and Dr. Kimelman recommended a cortisone injection. (JE 4:21). Dr. Kimelman noted that the claimant was nearing maximum medical improvement ("MMI") for his lower back injury, and referred him to physical therapy. (JE 4:21).

Ms. Tedford completed another physical therapy report on July 10, 2019, for Mr. Schuldt's left foot and ankle issues. (JE 10:87). He was initially evaluated on February 28, 2019. (JE 10:87). He completed 35 visits, and no change was noted to his symptoms. (JE 10:87).

On July 11, 2019, Mr. Schuldt returned to Dr. Kimelman's office with continued complaints of right shoulder pain. (JE 4:22-23). Mr. Schuldt complained of mild to moderate pain in his right shoulder. (JE 4:22). The pain occurred occasionally, but was stable. (JE 4:22). Mr. Schuldt complained of pain into his neck, and of a knot in his paralumbar spine adjacent to his previous surgical site. (JE 4:22). The knot in his spine bothered him when driving. (JE 4:22). Mr. Schuldt's spine surgeon refused to see him because they related his back issues to his work injury. (JE 4:22). Dr. Kimelman provided the claimant with a subacromial injection into the right shoulder. (JE 4:23). Dr. Kimelman recommended that the claimant continue with his exercise program and return in one month. (JE 4:23).

Mr. Schuldt had a functional capacity evaluation ("FCE") at Athletico Physical Therapy on August 9, 2019. (JE 12:91-97). At the beginning of the examination, Mr. Schuldt estimated that he could stand for about 10 minutes and walk for about 10 minutes. (JE 12:93). He was working five days per week with a sedentary restriction. (JE 12:93). The examiner found that Mr. Schuldt delivered consistent performance and that the FCE results were valid. (JE 12:91). The examiner opined that the claimant demonstrated physical capabilities and tolerances to perform "all of the essential job functions of the job as defined by the employer's job description." (JE 12:91). However, the examiner later noted that Mr. Schuldt demonstrated capabilities and functional tolerances to function in a medium physical demand level, while the physical demand level for his job is considered "heavy" based upon constant lifting/carrying up to 20 pounds. (JE 12:91-92). The examiner recommended the following work restrictions regarding Mr. Schuldt's left lower extremity:

- Waist to floor lifting – 30 lbs., occasionally
- Waist to shoulder lifting – 30 lbs., occasionally
- Bilateral carrying – 20 lbs., occasionally
- Horizontal pushing/pulling – 40/35 lbs. of force, occasionally
- Squatting – Occasionally and within demonstrated range of motion
- Stair climbing – Occasionally and with use of handrail for external support
- Standing/walking – Frequently with positional changes as required

(JE 12:91). The examiner observed that the claimant had diminished active left ankle dorsiflexion, inversion and eversion as compared to his right ankle. (JE 12:92). He also had diminished strength with resisted left ankle dorsiflexion. (JE 12:92). When walking, the examiner noted that the claimant had an antalgic gait including decreased weightbearing through the left lower extremity. (JE 12:92). These gait issues were also seen during retrograde walking and toe-walking. (JE 12:92).

The examiner performed range of motion measurement and found that the claimant had reduced range of motion in both hips below what were considered the "AMA Norms [sic]." (JE 12:94). His left knee showed minor reduction in flexion range of motion. (JE 12:94). He also displayed reduced range of motion in the left ankle as noted above. (JE 12:94). His only reduced strength was with dorsiflexion of his left ankle. (JE 12:94).

The claimant continued his care with Dr. Trout on August 15, 2019. (JE 6:39-41). Mr. Schuldt's left ankle issues were stable; however, he noticed more swelling and pain than usual. (JE 6:39). Mr. Schuldt continued to have a limp on his left side. (JE 6:40). Dr. Trout opined that there were no further treatments available for Mr. Schuldt's condition. (JE 6:40). He encouraged the claimant to continue to perform therapy at home. (JE 6:40). Dr. Trout placed the claimant at MMI. (JE 6:40). Dr. Trout kept Mr. Schuldt on modified work, but his restrictions are illegible. (JE 6:41).

Mr. Schuldt returned to Dr. Kimelman's office on September 10, 2019, for continued follow-up of his right shoulder pain. (JE 4:24-25). Mr. Schuldt noted he had aching pain that he rated 3 out of 10. (JE 4:24). Mr. Schuldt noted that he had pain with lifting, but had full range of motion. (JE 4:24). He complained of tingling and numbness in his hands, and also complained of pain that "goes up" from the base of the skull to the trapezius. (JE 4:24). Dr. Kimelman observed that the claimant had full range of motion in his cervical spine and in his right shoulder. (JE 4:25). According to Dr. Kimelman, the claimant did not mention his lower back pain, and so he was not asked about it. (JE 4:25). Dr. Kimelman released the claimant to full active duty regarding his right shoulder. (JE 4:25). Mr. Schuldt's rehabilitation nurse was also present, and told Dr. Kimelman that Dr. Schmitz felt nothing further was needed by way of treatment for Mr. Schuldt's neck. (JE 4:25). Dr. Kimelman requested that the claimant follow-up in one month, at which time he would achieve MMI. (JE 4:25).

Dr. Trout wrote a letter to Robin Woods of Genex regarding Mr. Schuldt's condition. (JE 7:56). He indicated that he reviewed the medical records and a functional capacity evaluation ("FCE") report including permanent restrictions. (JE 7:56). Dr. Trout opined that it would be "extremely difficult" for the claimant to stand for eight hours per day, and that it would be reasonable for the claimant to stand for a total of six hours per day with sedentary duty for two hours per day. (JE 7:56). Dr. Trout also recommended that the claimant take 15-minute breaks every two hours to rest/ice/elevate his foot, as needed. (JE 7:56).

Mr. Schuldt reported to Thomas Klein, D.O., at Iowa Ortho on September 24, 2019, for an examination of his neck. (JE 13:98-100). Dr. Kimelman referred the

claimant for a possible trapezius trigger point injection. (JE 13:98). He rated his pain 1-2 out of 10, and indicated that it occurred constantly. (JE 13:98). Lifting and working aggravated his neck issues. (JE 13:98). He also had occasional bilateral hand numbness and tingling. (JE 13:98). Upon examination, Dr. Klein noted trigger points over the right trapezius and splenius cervicis. (JE 13:99). Dr. Klein provided the claimant with a trigger point injection for myalgia. (JE 13:99).

Dr. Paulson wrote a letter to Robin Woods of Genex, dated January 3, 2020, opining as to the claimant's medical condition and permanent impairment. (JE 9:80). Dr. Paulson diagnosed the claimant with a triangular fibrocartilage complex tear that was found on a January 9, 2019, MRI. (JE 9:80). Dr. Paulson recollected the conservative treatment including corticosteroid injections, which provided relief. (JE 9:80). Dr. Paulson noted that Mr. Schuldt achieved MMI for his right wrist on March 25, 2019. (JE 9:80). Dr. Paulson tested the claimant's range of motion and found that he had 50 degrees of extension in both the left and right wrists. (JE 9:80). Based upon these measurements, there was no impairment. (JE 9:80). Mr. Schuldt demonstrated 50 degrees of flexion on the right, compared to 60 degrees on the left. (JE 9:80). This equated to a 2 percent upper extremity impairment according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (JE 9:80). His ulnar and radial deviations were normal, he had no loss of sensation on the right, and had "grossly normal" strength. (JE 9:80). Based upon his examination, Dr. Paulson opined that the claimant had a "final impairment" of 2 percent to the right upper extremity. (JE 9:80). Dr. Paulson concluded that the claimant required no permanent restrictions related to his right wrist. (JE 9:80).

Dr. Trout wrote another missive to Robin Woods of Genex on January 12, 2020. (JE 7:57). Dr. Trout noted that he placed Mr. Schuldt at MMI on August 15, 2019. (JE 7:57). Based upon his review of the medical records and using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Trout provided the claimant with a permanent impairment rating. (JE 7:57). Dr. Trout opined that the claimant had a 19 percent impairment to the left lower extremity, a 25 percent impairment to the left foot, and an 8 percent whole person permanent impairment. (JE 7:57).

On January 15, 2020, Dr. Kimelman issued a letter with an impairment rating to the right shoulder. (JE 5:26). Dr. Kimelman used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide the impairment rating. (JE 5:26). Based upon the Guides, Dr. Kimelman opined that the claimant had a 5 percent right upper extremity impairment. (JE 5:26).

Mark Taylor, M.D., M.P.H., C.I.M.E., F.A.C.O.E.M., examined the claimant for purposes of an IME on March 5, 2020. (JE 15:113-129). Dr. Taylor completed an IME report based upon his examination. (JE 15:113-129). Dr. Taylor issued his report on March 31, 2020. (JE 15:113-129). Dr. Taylor is board certified in occupational and environmental medicine, is a certified independent medical examiner, and is a fellow in the American College of Occupational and Environmental Medicine. (JE 15:128).

Dr. Taylor began his report by reviewing Mr. Schuldts job duties with East Penn. (JE 15:113). Mr. Schuldts reported that he lifted lead bars that could weigh up to 75 pounds. (JE 15:113). He noted that he sometimes picked up lead bars with a crane. (JE 15:113). Most commonly, Mr. Schuldts worked with 23 to 31 pound weights. (JE 15:113). He built 800 batteries per day, and worked about 75 percent of the time between waist and shoulder height. (JE 15:113-114). 20 percent of his work was described as below waist level, and 5 percent was above shoulder level. (JE 15:114). Mr. Schuldts reported that he enjoyed his job with East Penn, and got along well with his coworkers and supervisors. (JE 15:114).

Dr. Taylor continued his report by recounting the claimants history. (JE 15:114). This included the claimants relevant medical history. (JE 15:114). Mr. Schuldts described his current symptoms to Dr. Taylor. (JE 15:119). He complained of a constant tightness in his left heel and the bottom of his left foot. (JE 15:119). He rated his pain 5 to 6 out of 10 in the mornings, and 8 or 9 out of 10 in the evenings. (JE 15:119). Pain also extended proximally throughout the day. (JE 15:119). Mr. Schuldts also indicated that he could only bear weight on his left side for 15 to 20 minutes at a time, until he had to shift his weight onto his right side. (JE 15:119). Mr. Schuldts continued by complaining about burning pain in his right shoulder, specifically the AC joint. (JE 15:119). The burning pain ranged between 3 and 6 out of 10. (JE 15:119). Lifting his 26-pound grandson caused increased pain. (JE 15:119). Mr. Schuldts noted pain on the left side in the "mid to upper humeral area" and over the superior trapezius and supraspinatus. (JE 15:119). The pain on the left side was "more intermittent" and also included numbness and tingling in his hands from his elbows to his fingers. (JE 15:119). Mr. Schuldts continued by describing pain over the ulnar aspect of the right wrist that fluctuated in severity. (JE 15:120). The pain level depended on proximity to the time of his injections. (JE 15:120). Increased activities worsened his pain. (JE 15:120).

Mr. Schuldts told Dr. Taylor that he had difficulty with lifting, pushing, carrying, walking, standing, stooping, kneeling, working on ladders, and gripping or grasping. (JE 15:120). He also noted difficulty at home with travel, personal hygiene, standing, reclining, walking, going up and down stairs, lifting, carrying, feeling with his fingers, squatting, gripping and grasping. (JE 15:120). When he gets home, he sits in his chair and rests. (JE 15:120). He slept for seven hours per night, but sometimes had trouble falling asleep because it "takes the foot a while to settle down." (JE 15:120).

Upon examination, Dr. Taylor observed that the claimant walked with an antalgic gait protecting his left side. (JE 15:121). His limp remained when he walked backwards. (JE 15:121). He could not heel walk due to significant pain on the left side. (JE 15:121). His left foot was particularly tender over the posterior to the medial malleolus and down the medial calcaneus. (JE 15:122). Dr. Taylor also observed tenderness over the plantar aspect of the heel itself. (JE 15:122). He displayed reduced range of motion on the left. (JE 15:122). Dr. Taylor observed mild weakness of the left ankle, which was "a little bit difficult to fully assess due to pain and decreased motion." (JE 15:121). He could only squat halfway down due to back pain. (JE 15:121). He displayed tenderness in the lower lumbar and lumbosacral region into the

right PSIS and SI joint. (JE 15:121). Dr. Taylor noted that Mr. Schuldt had “minimal findings” on the left side. (JE 15:121). Overall, Dr. Taylor found the claimant to have good strength throughout his right hip, knee and ankle. (JE 15:121). He also found good strength of the left hip and knee. (JE 15:121). Dr. Taylor measured the range of motion in the left and right shoulders. (JE 15:122). Mr. Schuldt had less range of motion across his right shoulder when compared to his left. (JE 15:122). Dr. Taylor noted tenderness to palpation over the ulnar aspect of the right wrist, as well as the right AC joint. (JE 15:122).

Dr. Taylor listed the following diagnoses:

1. Nondisplaced fracture through superior and posterior cortex of the left calcaneus with extensive edema in the adjacent bone marrow.
2. Fracture blisters left heel.
3. Numbness/tingling of left heel/foot.
4. Right wrist arthralgia requiring injections.
5. Chronic cervicalgia.
6. Right-sided glenohumeral and AC joint arthralgia with impingement.
7. Left-sided intermittent trapezius pain as well as upper humeral/deltoid pain – etiology unclear at this time.
8. Chronic lumbago, right greater than left.
9. Occasional headaches, which appear to be more related to his chronic cervicalgia or neck pain.
10. Thoracic schwannoma with surgical resection on April 9, 2019 – unrelated to injury.

(JE 15:122-123). Dr. Taylor continued his report by opining as to the causation of various medical issues. Namely, Dr. Taylor noted that Mr. Schuldt’s previous right wrist issue recovered to the extent that he was “doing very well and was handling 800 batteries per shift.” (JE 15:123). Dr. Taylor opined that the claimant’s left lower extremity injury and issues were directly attributable to the work incident. (JE 15:123). He further related Mr. Schuldt’s right wrist pain and cervicalgia to the work incident. (JE 15:123). He noted that the claimant’s pain was not present prior to the injury. (JE 15:123). Dr. Taylor continued by relating Mr. Schuldt’s right impingement and AC joint issues to the work injury. (JE 15:124). Interestingly, Dr. Taylor opined that “[t]he injury may not have caused the radiographic arthritic changes of the AC joint, but he was not previously symptomatic. (JE 15:124). Dr. Taylor continued by indicating that “this could be viewed as a ‘lighting-up’ of a previously asymptomatic condition.” (JE 15:124). Dr. Taylor continued by noting that the claimant’s benign tumor in the low back was not related to his work injury. (JE 15:124). He had some improvement after the tumor removal, but Dr. Taylor indicated that Mr. Schuldt had persistent pain in the lower lumbar region that did not improve after the surgery. (JE 15:124). Given the location of the tumor, and the fact that the pain is in a different location, Dr. Taylor opined that the lumbar issues were related to the work injury. (JE 15:124).

Dr. Taylor continued his IME report by providing recommendations for additional medical care. (JE 15:125). Dr. Taylor opined that the claimant had “two areas of

significant concern,” the left lower extremity and right AC joint. (JE 15:125). With regard to the left lower extremity, Dr. Taylor recommended a referral to a foot and ankle orthopedic specialist, specifically at the University of Iowa. (JE 15:125). He deferred to the recommendations of a potential future orthopedic specialist as it related to additional care. (JE 15:125). Regarding, Mr. Schuldt’s AC joint complaints, Dr. Taylor noted how troubling Mr. Schuldt found his AC joint pain. (JE 15:125). Dr. Taylor recommended a referral to Dr. Nepola at the University of Iowa for a second opinion and potential second EMG, as well as a consultation for his left deltoid and upper humerus. (JE 15:125). Dr. Taylor also noted that Mr. Schuldt may need additional periodic injections with Dr. Klein, as well as potential injections for his neck or lower back. (JE 15:125). Finally, Dr. Taylor recommended orthotics for Mr. Schuldt’s shoes. (JE 15:125).

Dr. Taylor opined that the claimant achieved MMI for his left lower extremity on August 15, 2019. (JE 15:125). Regarding the right wrist, Dr. Taylor placed the claimant at MMI on August 26, 2019. (JE 15:125). He placed the claimant at MMI for his neck, right AC and impingement issues, and low back, as of October 8, 2019. (JE 15:126). Dr. Taylor concluded that the claimant could have a different MMI date if his treatment statuses changed. (JE 15:126).

Dr. Taylor noted that he agreed with restrictions outlined in the FCE and “the additional comments made by Dr. Trout.” (JE 15:127). Dr. Taylor recommended only lifting 20 pounds above shoulder level. (JE 15:127). He also recommended only occasional overhead reaching with the right arm. (JE 15:127). He noted that Mr. Schuldt should have the ability to alternate sitting, standing, and walking as needed for his comfort. (JE 15:127). Finally, Dr. Taylor noted that the claimant should avoid climbing ladders other than a stepladder. (JE 15:127).

Dr. Taylor then used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide impairment ratings for the claimant. (JE 15:126). For the left lower extremity, Dr. Taylor referenced Table 17-11 and 17-12. (JE 15:126). Mr. Schuldt could “not even reach neutral as far as extension, or dorsiflexion.” (JE 15:126). Flexion was noted to be 20 degrees or less when decreased extension was taken into account. (JE 15:126). Dr. Taylor continued by noting that Mr. Schuldt lacked inversion. (JE 15:126). Based upon his review and examination, Dr. Taylor provided the claimant with a 16 percent impairment rating to the left lower extremity. (JE 15:126). Dr. Taylor opined that this converted to a 6 percent whole person impairment. (JE 15:126). With regard to the right upper extremity, Dr. Taylor observed that the claimant had decreased range in his glenohumeral range of motion. (JE 15:126). Based upon this reduced range of motion, Dr. Taylor opined that the claimant sustained an 8 percent right upper extremity impairment. (JE 15:126). Dr. Taylor continued, by evaluating the claimant’s right wrist. (JE 15:126). With regard to the right wrist, Dr. Taylor observed that the claimant qualified for a 7 percent right upper extremity impairment. (JE 15:126). He combined this impairment with the right shoulder impairment and arrived at a 14 percent right upper extremity impairment. (JE 15:126). This converted to an 8 percent whole person impairment. (JE 15:126). Dr. Taylor then examined the permanent impairment attributed to the claimant’s cervicalgia and cervical spine. (JE 15:126). Dr. Taylor used Table 15-5 on page 392 of the Guides and placed the claimant into a DRE

cervical category II. (JE 15:126). Because of his periodic paresthesias and pain, Dr. Taylor opined that the claimant had a 6 percent whole person impairment. (JE 15:126). With regard to the chronic lumbago, low back, and lumbar pain, Dr. Taylor used Table 15-3 to place the claimant into DRE lumbar category II, and provided a 6 percent whole person impairment rating. (JE 15:126). Dr. Taylor took all of the whole person impairment ratings to arrive at a 24 percent whole person impairment. (JE 15:127).

Dr. Paulson visited with Mr. Schuld t again on September 16, 2020, at Iowa Ortho. (JE 8:62-64). Mr. Schuld t told the doctor that he had aching pain which he rated 8 out of 10 in his right wrist. (JE 8:62). Dr. Paulson noted that Mr. Schuld t had a "TFCC tear" in the right wrist. (JE 8:62). A previous injection helped with pain in the claimant's wrist for about four months. (JE 8:62). Dr. Paulson observed that the claimant had painful active range of motion. (JE 8:63). Dr. Paulson diagnosed the claimant with a complex tear of the triangular fibrocartilage of the right wrist. (JE 8:63). Dr. Paulson provided the claimant with another injection into the right wrist, which relieved the claimant's pain. (JE 8:63). Dr. Paulson opined that the claimant required no work restrictions. (JE 8:63-64).

On September 17, 2020, Dr. Trout examined Mr. Schuld t again. (JE 6:42-44). Mr. Schuld t complained of constant aching, sharp, and "pressure" in his left heel. (JE 6:42). Walking and standing aggravated his pain, while resting relieved it. (JE 6:42). Mr. Schuld t also indicated that he had swelling in his left foot. (JE 6:42). Dr. Trout observed Mr. Schuld t walking with a normal gait and fully bearing weight. (JE 6:43). X-rays of the left foot showed a plantar heel spur. (JE 6:43). Dr. Trout diagnosed Mr. Schuld t with plantar fasciitis in his left foot, and provided him with another injection. (JE 6:43). Dr. Trout prescribed Mr. Schuld t with a Medrol DosePak and sent him for an EMG to examine possible nerve damage. (JE 6:44). Dr. Trout did not feel that Mr. Schuld t was a good candidate for surgery in his current condition. (JE 6:44).

Dr. Paulson saw Mr. Schuld t again on October 28, 2020, at Iowa Ortho. (JE 8:65-66). Mr. Schuld t's symptoms were noted as being mild, and relieved by rest and injections. (JE 8:65). He told Dr. Paulson that his wrist was "almost 100% [sic] better." (JE 8:65). Since he did well with injections, he was not interested in having surgery for his complex tear of his triangular fibrocartilage of the right wrist. (JE 8:65-66). Dr. Paulson requested that the claimant return in four months. (JE 8:66).

Dr. Trout saw Mr. Schuld t for a follow-up visit on October 29, 2020. (JE 6:45-47). Mr. Schuld t had an EMG, which was normal. (JE 6:45). He continued to complain of pressure in his left foot that was aggravated by walking and relieved by rest. (JE 6:45). His foot got sore in the third through fifth toes, and the posterior aspect of the heel. (JE 6:45). Dr. Trout diagnosed Mr. Schuld t with synovitis of his left ankle and left plantar fasciitis. (JE 6:46). Dr. Trout prescribed lidocaine patches and custom orthotics. (JE 6:46). Dr. Trout made no changes to the claimant's restrictions. (JE 6:47).

Mr. Schuld t returned to Dr. Paulson's office on March 8, 2021, to follow-up on his right wrist issues. (JE 8:67-68). Mr. Schuld t rated his pain a 7 out of 10, and indicated that it occurred constantly. (JE 8:67). Dr. Paulson noted that the previous injection

provided the claimant with four to five months of relief for his complex tear of his triangular fibrocartilage in his right wrist. (JE 8:67-68). Dr. Paulson provided another injection into the right wrist. (JE 8:68).

On March 30, 2021, Dr. Trout again saw Mr. Schuldt for his left foot concerns. (JE 6:48-50). Mr. Schuldt described his pain as aching and burning. (JE 6:48). He rated it 9 out of 10. (JE 6:49). Mr. Schuldt was wearing orthotics for about four weeks. (JE 6:48). He told Dr. Trout that he worked all day, but then was “hardly mobile” once he returned home. (JE 6:48). Mr. Schuldt was again walking with a limp. (JE 6:49). Dr. Trout discussed treatment options with the claimant, which included using a TENS unit and/or an evaluation with a pain specialist. (JE 6:49). Mr. Schuldt opted for the TENS unit. (JE 6:49).

Dr. Paulson examined the claimant again on April 12, 2021, for his right wrist pain. (JE 8:69-71). Mr. Schuldt rated his pain 1 out of 10. (JE 8:69). Dr. Paulson found no tenderness to palpation in the right wrist. (JE 8:69-70). Mr. Schuldt had “good relief” following his injection. (JE 8:70). Based upon his improvement, Dr. Paulson declared the claimant at MMI effective April 12, 2021, despite his opinion that Mr. Schuldt may require further treatment. (JE 8:70). Dr. Paulson opined that the claimant had no permanent impairment as of the visit. (JE 8:70). He allowed the claimant to return to work with no restrictions. (JE 8:70-71).

On May 12, 2021, David Vittetoe, M.D., examined the claimant for complaints of left knee pain. (JE 14:110-112). Mr. Schuldt told the doctor that he had “activity related pain” and discomfort over the posterior of his left knee, calf, and left foot. (JE 14:110). Mr. Schuldt also noted that the problems affect his hip and back. (JE 14:110). Upon examination, Dr. Vittetoe noticed that Mr. Schuldt ambulated with a limp on his left side. (JE 14:111). He had no swelling over his left knee, and had a range of motion from 0 to 130 degrees. (JE 14:111). He displayed no discomfort with palpation to the medial or lateral joint lines. (JE 14:111-112). An x-ray of the left knee showed mild degenerative disease. (JE 14:112). Dr. Vittetoe diagnosed the claimant with mild osteoarthritis and chronic left foot pain. (JE 14:112). Dr. Vittetoe opined that Mr. Schuldt’s altered gait due to his foot symptoms caused his calf and posterior leg pain. (JE 14:112). Mr. Schuldt expressed a desire for a second opinion regarding his foot, which the doctor opined “would probably be reasonable.” (JE 14:112).

Mr. Schuldt returned to Dr. Trout’s office on July 13, 2021. (JE 6:51-55). Mr. Schuldt told Dr. Trout that his foot was “killing” him and that his pain was worse. (JE 6:51). He was never provided with a TENS unit. (JE 6:51). He walked with a limp on the left side. (JE 6:52). Dr. Trout again recommended approval of a TENS unit, and recommended that the claimant have an evaluation with a pain specialist. (JE 6:53, 55). Dr. Trout made no changes to the claimant’s restrictions. (JE 6:54).

Dr. Paulson saw Mr. Schuldt again on July 14, 2021, at Iowa Ortho. (JE 8:72-73). Mr. Schuldt rated his right wrist pain 9 out of 10. (JE 8:72). Mr. Schuldt told Dr. Paulson that he noticed pain after his last injection that “never went away.” (JE 8:72).

Dr. Paulson provided Mr. Schuldts with another Kenalog injection for his right triangular fibrocartilage tear. (JE 8:73).

On August 3, 2021, Dr. Klein saw Mr. Schuldts again at Iowa Ortho. (JE 13:101-103). Mr. Schuldts complained of pain of 6 out of 10 in his left foot. (JE 13:101). His pain was constant and worsening. (JE 13:101). Pain radiated into his left posterior calf causing soreness. (JE 13:101). He told Dr. Klein that previous injections by Dr. Trout provided no relief to the left heel. (JE 13:101). Dr. Klein reviewed the results of an EMG, which were normal. (JE 13:102). Dr. Klein reviewed an MRI of the lower extremity from October of 2018, which showed a cluster of subchondral cysts along the medial aspect of the talar dome. (JE 13:102-103). The plantar fascia was also thickened on the MRI. (JE 13:103). Finally, Dr. Klein noted moderate edema in the posterior and superior aspect of the calcaneus with a “small linear focus of decreased T1 weighted signal undermining the most superior and posterior cortex.” (JE 13:103). Dr. Klein opined that this was consistent with a nondisplaced fracture. (JE 13:103). Dr. Klein’s diagnoses based upon review of the MRI were:

1. Tiny nondisplaced fracture through the superior and posterior cortex of calcaneus with small contusion to the anterior aspect of the calcaneus abutting the inferior aspect of the calcaneocuboid joint.
2. Osteochondral defect along the medial aspect of the talar dome with overlying grade I-II chondromalacia. This has a well formed cyst.
3. Extensive edema in the subcutaneous fact with no drainable hematoma or sarcoma.
4. Moderate plantar fasciitis.

(JE 13:103). Dr. Klein listed diagnoses of: neuralgia and neuritis and chronic pain in the right foot. (JE 13:103). While the exhibit says “right foot,” the injury at issue in this case is the left foot, and the undersigned presumes that this was a scrivener’s error by Dr. Klein. Dr. Klein recommended the claimant continue his home exercise program. (JE 13:103). He sent a prescription for formal physical therapy, and prescriptions for various medications. (JE 13:103). Finally, Dr. Klein emphasized the importance of adequate shoes with good arch support. (JE 13:103).

Mr. Schuldts returned to Dr. Paulson’s office at Iowa Ortho on September 15, 2021, for continued right wrist care. (JE 8:74-75). Mr. Schuldts noted that his previous injection, three months prior, was beginning to wear off. (JE 8:74). Dr. Paulson discussed his treatment options, and ultimately, the claimant decided to wait another one to two months for a repeat injection. (JE 8:75).

On October 21, 2021, the claimant reported to Dr. Paulson’s office at Iowa Ortho with complaints of right wrist pain that he rated 8 to 10 out of 10. (JE 8:76-78). Mr. Schuldts requested another injection for his right wrist pain. (JE 8:76). Dr. Paulson provided him with another Kenalog injection for his right triangular fibrocartilage complex tear. (JE 8:77). He requested that the claimant follow-up in four months. (JE 8:77). He allowed the claimant to return to work with no restrictions. (JE 8:78).

Mr. Schuldt returned to Dr. Klein's office at Iowa Ortho on November 9, 2021. (JE 13:104-106). Mr. Schuldt noted that his pain occurred in his left foot and heel. (JE 13:104). The pain radiated into his left calf. (JE 13:104). At its worst, he rated his pain 10 out of 10. (JE 13:104). At the time of the evaluation, he rated his pain 8 out of 10. (JE 13:104). Physical therapy helped improve his mobility. (JE 13:104). He previously took Gabapentin, which provided moderate relief. (JE 13:104). He had ongoing shooting pain in his left foot. (JE 13:104). Dr. Klein diagnosed the claimant with pain, neuralgia and neuritis in his left foot. (JE 13:105). Dr. Klein recommended that the claimant continue a daily home exercise plan, along with Voltaren gel. (JE 13:105). Dr. Klein told the claimant to wear adequate shoe gear with good arch supports. (JE 13:105). Mr. Schuldt requested a second opinion, to which Dr. Klein presented no opposition. (JE 13:105).

Dr. Klein saw Mr. Schuldt again on December 7, 2021, for his continued left foot complaints. (JE 13:107-109). He rated his pain 6 to 7 out of 10, and described it as pressure. (JE 13:107). Mr. Schuldt took Gabapentin, and no longer had shooting pain in his foot. (JE 13:107). Dr. Klein continued to recommend that the claimant perform a daily home exercise plan, and use over-the-counter Voltaren gel. (JE 13:108). Dr. Klein also continued to emphasize the importance of wearing proper shoes "with good arch supports." (JE 13:108). Mr. Schuldt again requested a second opinion on his left foot issues. (JE 13:108).

Due to restrictions imposed by Dr. Trout, Mr. Schuldt could not return to his previous position at East Penn. (Testimony). He was put in a part-time painter position for a time. (Testimony). Eventually, he was made a permanent painter. (Testimony). As a painter he can sit down and paint, or sit down while using a scrubber. (Testimony).

By July of 2020, Mr. Schuldt was earning twenty-one and 00/100 dollars (\$21.00). At the time of the hearing, he earned twenty-three and 00/100 dollars (\$23.00) per hour. (Testimony). He did not receive incentive pay in his new position, and testified that he worked at least two hours of overtime. (Testimony). He has worked at least 40 hours per week, and up to 50 hours per week, at times. (Testimony). He understood that the individuals who took over his position averaged earnings of thirty and 00/100 dollars (\$30.00) per hour. (Testimony). He did not offer any proof of this beyond his testimony.

Mr. Schuldt testified that he could not work his previous position on a full-time basis if it were offered to him. (Testimony). He also did not think he could perform other assembly jobs at East Penn because the jobs required standing for eight hours. (Testimony). He attempts to perform work in his previous position for a short period of time in order to train people on how to run the machine more efficiently. (Testimony). He testified that he can only run the machine for an hour and a half before the twisting and turning was "too much" on his foot. (Testimony). He clarified this to note that he performed about two hours of similar duty to his pre-injury position per day. (Testimony). Mr. Schuldt further testified that his working an hour and a half to two hours per day only was not a medical restriction, it is simply that "[t]hey won't [sic] let me do it any longer than that." (Testimony).

As of the time of the hearing, Mr. Schuldt continued to have issues with his left foot, right wrist, back, neck, and right shoulder. (Testimony). His left foot issues were the most frequent. (Testimony). Mr. Schuldt testified that he cannot walk on his left heel. (Testimony). He walked on his tiptoes when his shoe was off, which caused his calf to become sore. (Testimony). The pain then affects his sleep or his ability to sit in a chair. (Testimony). His right wrist continues to be sore and he received shots to relieve pain every three to six months. (Testimony). He cannot turn his head all the way around due to neck pain. (Testimony).

Mr. Schuldt testified that he had no plans to retire at the time of his injury. (Testimony). Now, Mr. Schuldt would like to retire, but noted that whether he can retire depends on his health and monetary situation. (Testimony). He testified in his deposition that he wanted to work until he was 70 years old. (JE 28). Mr. Schuldt testified that he used to be active in the rodeo, including helping children in the arena. (Testimony). He can no longer do this, and has to sit in a chair. (Testimony). Taking care of his horses and hauling hay had gotten "ten times harder" than it was before he was injured. (Testimony). He also has issues mowing his grass. (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 Rule of Appellate Procedure 6.904(3).

Permanent Disability

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

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

to buttress expert testimony, and therefore is also relevant and material to the causation question.

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

Under the Iowa Workers’ Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is “limited to the loss of the physiological capacity of the body or body part.” Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of aftereffects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Generally, permanent partial disability falls into two categories. A scheduled member, as defined by Iowa Code section 85.34(a) – (u), or a loss of earning capacity, also known as industrial disability, as defined by Iowa Code section 85.34(2)(v). Lauhoff Grain v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935). Iowa Code section 85.34(2)(v) provides an alternative to the scheduled member and/or industrial disability compensation methods.

Iowa Code section 85.34(2)(v) states, in relevant part:

If 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 resulting from the injury, and not in relation to the employee's earning capacity.

In determining whether the above provision of Iowa Code section 85.34(2)(v) applies, there is a comparison between the pre- and post-injury wages and earnings. McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). A claimant's hourly wage must be considered in tandem with the actual hours worked by that claimant or offered by the employer. Id.

The defendants argue that the claimant has returned to work at the same or greater wage than he earned prior to the work incident. The claimant earned sixteen and 85/100 dollars (\$16.85) per hour as a base rate of pay at the time of his injury. East Penn provided a higher rate of pay based upon a bonus structure. There is no information in the record that disputes the claimant's characterization of his rate of pay at the time of the injury. The claimant testified credibly throughout the hearing. The defendants did not provide evidence contrary to the claimant's testimony. The claimant testified that based upon the bonus structure for his productivity, he earned twenty-four and 55/100 dollars (\$24.55) per hour. At times, he earned upwards of twenty-five and 00/100 dollars (\$25.00) per hour. The claimant alleges that he could be earning as much as thirty and 00/100 dollars (\$30.00) per hour had he continued in his previous position; however, there is no proof of this other than hearsay testimony based upon the claimant's conversations with other employees.

After returning to work as a painter with East Penn, Mr. Schuldt earned sixteen and 85/100 dollars (\$16.85) per hour. This was eventually increased to twenty-one and 00/100 dollars (\$21.00) per hour, and was twenty-three and 00/100 dollars (\$23.00) per hour at the time of the hearing.

In arriving at a rate calculation, the parties used both the base hourly rate, and an increased amount that they deemed "other" in arriving at their stipulated average weekly wage. The "other" amount appears to be based upon the increased amount of the claimant's hourly earnings for his production bonuses. Iowa law provides that "irregular bonuses" or "overtime" or a contribution for welfare expenses shall not be included in a calculation of gross earnings. Iowa Code section 85.61(3). Based upon the information in the record, the claimant's production bonuses were not irregular. Clearly, the parties did not believe so, as they included them in the stipulated rate calculation. The claimant is working additional hours of overtime now. He was not working this additional overtime prior to the injury; however, the question is two part: 1. The claimant's earnings before and after the injury; and, 2. The actual hours worked by the claimant. McCoy, File No. 1651840.01 (App. April 9, 2021). The claimant is no longer earning his production bonus. His hourly rate after his injury is lower than his pre-injury hourly rate when the production bonus is considered.

The parties also argue as to whether the claimant is only entitled to functional disability benefits or industrial disability benefits. The claimant alleges that he is entitled to industrial disability benefits based upon his claimed injuries to multiple body parts. The defendants allege that the claimant suffered injuries to these body parts in a prior

incident, and that only the claimant's injuries related to the workplace accident should be considered. Namely, the defendants argue that the claimant has pre-existing neck, shoulder, and back injuries that had not resolved by the time of the work injury. They urge the undersigned to apportion disability related to a prior incident and/or illness unrelated to employment that "independently produces some ascertainable portion of the ultimate industrial disability which exists following the employment-related aggravation." Defendants' Post-Hearing Brief, pg. 4 (citing Celotex Corp. v. Auten, 541 N.W.2d 252 (Iowa 1995)).

While a claimant is not entitled to compensation for the results of a preexisting disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). It is well established in workers' compensation that "if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990).

In 2016, the claimant injured his left shoulder and his right wrist in a rodeo accident. He tore some ligaments in his left shoulder, and broke the top of his right hand in two places. He remained off of work for six months following surgery. He returned to work 100 percent recovered with no restrictions. He credibly testified that his right wrist issues were resolved prior to the work incident in October of 2018. He had no medical care between his return to work following his injury and the October of 2018, work injury. In the days following his injury, it is important to note that the claimant provided a statement to the insurer, indicating that he injured his left foot, left ankle, right wrist, right shoulder, and lower back. The medical record correlates to these injuries.

The defendants further argue that the claimant's lower back benign tumor was the cause of his lower back pain, and therefore his lower back pain should not be considered related to the events of October of 2018. Again, Mr. Schuldt testified credibly that his lower back issues continued after the tumor removal. This is bolstered by Dr. Taylor's IME report, wherein he notes that the tumor was located in a spot in the claimant's lower back that differed from the location in which the claimant complained of pain and lower back issues. At the time of his IME with Dr. Taylor, the claimant displayed tenderness in the lower lumbar and lumbosacral regions into the right PSIS and SI joint. There is little-to-no indication in the record that the tumor itself caused Mr. Schuldt's lower back pain. The fact that it persisted after the tumor removal, and that he still had pain at the time of his IME with Dr. Taylor indicates that it was not an issue in the back pain that was related to the work injury of October of 2018.

The defendants argue that the claimant's neck issues are related to the claimant's left shoulder; however, there is no medical proof or evidence indicating that this is the case. I find the defendants' argument as to this issue to be completely without merit.

Based upon the foregoing, the claimant sustained permanent impairment to the left lower extremity, right shoulder, right wrist, neck, and lower back. It appears from the record that the work injury may have "lighted up" the claimant's pre-existing right wrist issues. The other issues all stemmed from the work injury. The claimant has permanent impairment to three scheduled members, and two areas that are considered "body as a whole" impairments. The claimant also has demonstrated that he is not working at the same or increased earnings. Therefore, the claimant is entitled to an industrial disability analysis.

Since the claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "[i]t is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted, and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.S.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

At the time of the hearing, Mr. Schuldt was 65 years old. The extent of his formal education is completing high school. Mr. Schuldt worked as a construction laborer in Osceola, Iowa. Mr. Schuldt's employment history consists almost entirely of work as a laborer. He framed new homes, which included hammering, sawing, climbing ladders, and installing roofing. He described this as a very demanding job.

The claimant then worked at Crestline Windows, where he built storm windows, and eventually progressed to a supervisory position. As a laborer at Crestline Windows, he constructed windows, including their frames, inserting glass, and preparing them for shipping. He described this as a physically demanding job.

He continued his employment by becoming a production manager with Survivor Systems for 12 years. He worked in the field and fixed problem windows in people's homes. He also serviced commercial accounts in Iowa, Missouri, Kansas, and Illinois. This involved driving 1,200 to 1,300 miles per week. He was required to climb ladders, and perform lifting of windows.

In 2009, Mr. Schuldt joined East Penn. He built vehicle batteries and ran a machine that cast lead onto battery groups. This required loading and unloading batteries from the machine, and setting the battery on a table. He built between 700 and 800 batteries per day, each of which weigh 18 to 30 pounds. He had to stand for the entirety of his shift.

Since returning from his injury, Mr. Schuldt has worked as a painter at East Penn. Initially, he worked in a temporary position; however, he eventually became a permanent painter. He is allowed to sit down and paint, or sit down while using a scrubber. He has continued to work in this position, and has worked several hours of overtime per week. During this time, he helps train new employees to operate the machines more efficiently. He is clearly very motivated to work.

Based upon the evidence in the record, the claimant has sustained a loss in earnings of at least one and 55/100 dollars (\$1.55) per hour. It is possible that the loss of earnings could be more than this, but there is inadequate evidence in the record to prove this.

Mr. Schuldt had his left foot pinned under a forklift for a period of time. He was knocked to the ground on his right side. His left foot had blisters on it for a time. He later developed neuralgia and neuritis in his left foot. Dr. Taylor noted diagnoses related to his work injury as follows: nondisplaced fracture through superior and posterior cortex of the left calcaneus with extensive edema in the adjacent bone marrow; fracture blisters left heel; numbness/tingling of left heel/foot; right wrist arthralgia requiring injections; chronic cervicalgia; right sided glenohumeral and AC joint arthralgia with impingement; chronic lumbago greater on the right; and, occasional headaches. He also sustained a right sided triangular fibrocartilage complex tear according to Dr. Paulson. At the time of the hearing, Mr. Schuldt continued to complain of pain in his left foot, right wrist, back, neck, and right shoulder. He could not walk on his left heel. His pain affected his sleep and ability to sit in a chair. His right wrist continued to require injections to relieve soreness. He also claimed that he could not turn his head all the way due to neck pain. Taken together, these are moderate to severe injuries.

Several doctors have recommended permanent restrictions for the claimant. The valid FCE recommended restrictions of:

- Waist to floor lifting – 30 lbs., occasionally
- Waist to shoulder lifting – 30 lbs., occasionally
- Bilateral carrying – 20 lbs., occasionally
- Horizontal pushing/pulling – 40/35 lbs. of force, occasionally
- Squatting – Occasionally and within demonstrated range of motion
- Stair climbing – Occasionally and with use of handrail for external support
- Standing/walking – Frequently with positional changes as required

(JE 12:91). Treating physician, Dr. Trout agreed with the restrictions from the FCE, but noted that he had reservations as to whether the claimant could remain on his feet for an entire day. He noted that Mr. Schuldt should be allowed to stand for a total of 6 hours with sedentary duty for 2 hours per day. Dr. Trout also recommended that the claimant be provided with 15-minute breaks every 2 hours. He finally recommended that the claimant be allowed frequent positional changes. Dr. Taylor agreed with the FCE restrictions and those of Dr. Trout. He added that the claimant should only lift 20

pounds above shoulder level, and that the claimant should only occasionally reach his right arm overhead. He also recommended that Mr. Schuldt be given the ability to alternate sitting, standing, and walking as needed for comfort. He finally recommended that the claimant avoid climbing any ladders taller than a stepladder. Dr. Paulson opined that the claimant required no permanent restrictions regarding his right wrist.

East Penn seems to have adopted the restrictions of Dr. Trout, as they moved Mr. Schuldt to a different position which appears to accommodate his restrictions.

The restrictions of Dr. Trout, Dr. Taylor, and the FCE are fairly severe when it comes to an employee that worked as a laborer for their entire career. These restrictions, along with Mr. Schuldt's continued pain and limitations in his activities of daily living and his activities at work present a significant barrier for the claimant returning to engage in work for which he is suited. Should the claimant ever leave East Penn, he may have difficulty obtaining a new position which accommodates his restrictions. He also would not be able to work in construction, window making, or his job with Survivor Systems based upon these restrictions.

Finally, I consider the impairment ratings. While these are not the only factor to be considered in an industrial disability analysis, they nevertheless bear importance as to a final determination. Dr. Kimelman, the claimant's treating physician for his right shoulder, opined that the claimant had a 5 percent permanent impairment to the right upper extremity. Dr. Paulson opined that the claimant had a 2 percent permanent impairment to his right upper extremity due to his wrist injury. Dr. Trout opined that the claimant had a 19 percent impairment of the left lower extremity, a 25 percent impairment to the left foot, and an 8 percent whole person impairment.

Dr. Taylor, who provided the most comprehensive impairment ratings, opined that the claimant had a 16 percent impairment to the left lower extremity. He converted this to a 6 percent whole person impairment. He continued by opining that the claimant had an 8 percent right upper extremity impairment due to reduced range of motion in the right shoulder. He further opined that Mr. Schuldt had a 7 percent right upper extremity impairment due to issues in his right wrist. The combined right upper extremity impairments equated to a 14 percent right upper extremity impairment, or an 8 percent whole person impairment. Dr. Taylor continued his opinions by noting that the claimant had a 6 percent whole person impairment due to the claimant's cervical issues. He concluded by opining that the claimant had a 6 percent whole person impairment due to his lower back issues. When taking all of the whole person impairment ratings into consideration, Dr. Taylor provided the claimant with a 24 percent whole person impairment. Some of Dr. Taylor's impairment rating with regard to the claimant's cervical issues related to alleged headaches suffered by the claimant. There is limited information in the record as to these alleged headaches. Therefore, I do not find the entirety of Dr. Taylor's impairment ratings credible. However, the bulk of them are persuasive in this matter.

Based upon the foregoing, and the factors considered in an industrial disability analysis, I find that the claimant sustained a 50 percent industrial disability. This represents 250 weeks. (.50 x 500 = 250 weeks).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code section 85.34.

Costs

Claimant seeks the award of costs as outlined in Joint Exhibit 26. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The claimant requests reimbursement for a filing fee, and a deposition transcript. The rule does not allow for a taxation of costs for a deposition transcript. The rule only allows for attendance of a certified shorthand reporter at a deposition and/or hearing. Therefore, awarding costs for this would not be appropriate.

In my discretion, I award costs for one filing fee in this matter. The defendants shall reimburse the claimant one hundred and 30/100 dollars (\$100.30) related to the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

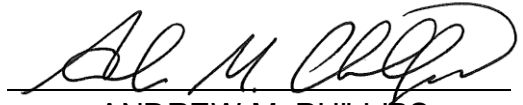
That the defendants shall pay the claimant two hundred and fifty (250) weeks of permanent partial disability benefits at the agreed upon rate of five hundred ninety eight and 02/100 (\$598.02) per week commencing on the stipulated date of February 11, 2020.

That the defendants shall reimburse the claimant one hundred and 30/100 dollars (\$100.30) for costs.

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

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

Signed and filed this 22nd day of September, 2022.


ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

H. Detlie (via WCES)

Jason Neifert (via WCES)

Tiernan Siems (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.